

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-079**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Mr. Trevor Anderson
Ms Janet R. Frohlich

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Ken Kaltornyk of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.

HEARING DATES: April 21, 22, 23 and 24, 2015

ISSUE(S): Whether the Appellant is entitled to Personal Injury Protection Plan benefits.

RELEVANT SECTIONS: Sections 70(1) and 71(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

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

Reasons For Decision

The Appellant was involved in a motor vehicle accident on May 27, 2002. While driving in a motor vehicle at highway speed, the motor vehicle caught the shoulder of the road which resulted in a rollover of the motor vehicle. The ambulance record indicated the Appellant was found hanging upside down in the car by a witness. The Appellant reported right arm pain, neck pain and a contusion over the right anterior leg. A cardiovascular assessment was unremarkable and her Glasgow Coma Scale score was normal.

As a result of the injuries the Appellant sustained in the motor vehicle accident, the Appellant saw [Appellant's doctor #1] on May 29, 2002 and complained of mild headache, memory problems and occasional irritability. A possible concussion was noted.

The Appellant saw [Appellant's doctor #1] again on June 5 and 18, 2002 and he noted she continued to report irritability and mood swings. The Appellant advised [Appellant's doctor #1] that her mood swings had predated the accident.

The Appellant saw [Appellant's doctor #2] on July 4, 2002 and discussed the motor vehicle accident with him and he reported that she suffered a "concussion and whiplash". A CT scan of the brain followed on July 17, 2002 and no abnormalities were identified.

On July 17, 2002 the Appellant saw [Appellant's doctor #2] again and reported lower back pain. The Appellant also reported headaches, dizziness, irritability and numbness of the great toes bilaterally.

The Appellant saw [Appellant's doctor #1] on July 22, 2002, approximately two months following the motor vehicle accident. [Appellant's doctor #1]:

- i. Prepared an Initial Healthcare Report which indicated that the Appellant's symptoms were "headaches, light-headedness, numbness in toes, sore neck".
- ii. Conducted a physical examination and documented a normal neurological examination with the exception of weakness in the hands which were perhaps a result of the Appellant's past history of carpal tunnel syndrome.
- iii. Made a diagnosis of "mild neck strain ongoing headaches/light-headedness".
- iv. Indicated that this was consistent with "Whiplash-Associated Disorder Type II".

The Appellant was noted to have full function with symptoms and was felt to be capable of working. (Underlining added)

Application for Payment – July 22, 2002:

In an Application for Payment of medical, travel and clothing expenses, made by the Appellant on July 22, 2002 she listed her injuries as “concussion, numbness in big toes, headaches, whiplash”.

On August 6, 2002 the Appellant saw [Appellant’s doctor #2] and complained of suprapubic pain, urinary frequency and fatigue.

The Appellant saw [Appellant’s doctor #1] on the following dates:

- a) On September 3, 2002, the Appellant complained of headaches and sinus infection; numbness in her toes.
- b) On September 11, 20, and 24, 2002 there were diagnoses of rhinitis and sinusitis.
- c) On October 3, 2002 the Appellant complained of numbness.

The Appellant saw [Appellant’s chiropractor] on October 8, 2002 with symptoms of low back pain radiating to the big toe bilaterally. He diagnosed “whiplash with a 5th lumbar disc herniation”.

[Appellant’s doctor #1] referred the Appellant to [Appellant’s neurologist], a neurologist. On December 3, 2002 [Appellant’s neurologist] evaluated the Appellant with respect to her report of numbness involving her right toes and left toe. The Appellant claimed the onset of these

symptoms occurred approximately two weeks following the motor vehicle collision on May 27, 2002.

[Appellant's neurologist]:

- i. Reported the Appellant specifically "has no pain or weakness in her legs, neurological symptoms in her upper limbs, pain anywhere along her spine, bladder or bowel disturbances,....or any symptoms above her cervical spine apart from chronic non-descriptive and non progressive headaches".
- ii. Noted that the neurological examination was normal.
- iii. Opined that her condition was unrelated to her 2002 motor vehicle collision.
- iv. Recommended further medical evaluation and a reassessment if her symptoms progressed.

The Appellant saw [Appellant's doctor #1] on a number of occasions as follows:

- a) On January 7 and 20, 2003 the Appellant reported lower abdominal pain, cramps, constipation and nausea.
- b) On February 6, 20 and 27, 2003 the Appellant continued to report lower abdominal pain associated with bloating, his diagnosis was documented as "likely irritable bowel".

[Appellant's doctor #1] reported that:

- a) On March 25, April 20, May 13, June 5, and June 13, June 17, 2003 the Appellant was complaining of irritable bowel symptoms.
- b) The Appellant reported flare-up through July 2003.

Through August 2003 the Appellant reported to [Appellant's doctor #1] bowel symptoms increasing and decreasing.

Through September 2003, the Appellant continued with symptoms of irritable bowel syndrome and feeling chronically tired.

The Appellant was diagnosed by [Appellant's doctor #1] with irritable bowel syndrome in January 2003. [Appellant's doctor #1] noted that it appeared that the Appellant had this condition "for years but it flared up before the January diagnosis".

[Appellant's doctor #1] referred the Appellant to an Internal Medicine practitioner, [Appellant's internal medicine specialist]. On October 9, 2003, [Appellant's internal medicine specialist] noted a history of mild constipation since the Appellant's childhood, and a worsening of bloating, pain and pressure in the abdomen beginning in January 2003.

In October 2003, the Appellant moved to [text deleted] and began seeing [Appellant's doctor #3]. [Appellant's doctor #3] assessed the Appellant on November 18, 2003 and on January 15, 2004 and diagnosed an irritable bowel syndrome and documented a chronic neck sprain.

On May 11, 2004 the Appellant saw [Appellant's doctor #4] and reported joint pains especially involving the hands and shoulders, which were not specific in nature. No swelling was observed and a referral to a rheumatologist was recommended.

The Appellant was assessed by a [Appellant's doctor #5] on August 24, 2004 who diagnosed menorrhagia over the previous five years with associated irritable bowel syndrome, fatigue and headache. The Appellant also reported widespread joint pains and urinary stress incontinence.

On September 15, 2004 the Appellant saw [Appellant's doctor #3] with a complaint of non-specific chronic muscle and joint pain. [Appellant's doctor #3] noted 5 to 18 tender points and queried the diagnosis of fibromyalgia. A referral was made to a rheumatologist, [Appellant's rheumatologist #1].

[Appellant's rheumatologist #1] assessed the Appellant and reported to [Appellant's doctor #3] on November 22, 2004. In his opinion the Appellant had fibromyalgia and in his report he stated:

- a) A history of diffuse aches and pains in different muscles and joints associated with non-refreshing sleep and general tiredness.
- b) Complained of headaches.
- c) Complained of tingling sensation in the limbs and lower back pain.
- d) Admitted difficulty in concentrating and memory problems.
- e) Suffers from cold hands and feet and intolerance to bright light and noise.
- f) Episodes of dry mouth and eyes.
- g) Suffers from irritable bowel syndrome.
- h) Episodes of light-headedness as well.

In December 2004 the Appellant attended [Appellant's doctor #3] and he noted irritable bowel symptoms and widespread muscle and joint aches which persisted through January 24, 2005.

On March 3, 2005 [Appellant's doctor #3] provided a report to MPIC detailing the clinic visits, noting the diagnosis of fibromyalgia and irritable bowel syndrome. [Appellant's doctor #3] indicated that in his opinion the Appellant's symptoms of irritable bowel and the diagnosis of fibromyalgia occurred after the May 2002 motor vehicle accident.

On March 13, 2005 [Appellant's doctor #2] provided correspondence to the Appellant indicating he had reviewed her file as requested by her. He indicated that during the time the Appellant was a patient at the clinic between September 1995 and October 3, 2003 there was no documentation of fibromyalgia or fibromyalgia-like symptoms.

A review of [Appellant's doctor #3's] chart notes indicated that between May 5, 2005 and October 13, 2005 the Appellant saw him on six occasions and complained of the following problems:

- a) On May 5, 2005 the Appellant presented with a sinus infection and expressed some paranoid thinking. A mental health referral was initiated.
- b) On June 10, 2005 the Appellant presented with dysuria and urinary frequency.
- c) On July 25, 2005 he documented the diagnosis of irritable bowel symptoms and mild depression. Counselling was recommended. He noted "patient still wants to have letter that will connect MVA with fibromyalgia".
- d) On September 9, 2005 the Appellant presented with a request for a letter to MPI.
- e) In September and October 2005 the Appellant was seen for management of pneumonia.
- f) On October 13, 2005, he noted the Appellant presented with marital difficulties. [Appellant's doctor #3] documented that the "patient wants letter to say that stress related to marriage problems causes increased IBS (irritable bowel symptoms) and FM

(fibromyalgia)". The Appellant was advised that a legal request would be necessary to provide such a letter.

On April 5, 2005 [Appellant's doctor #6] undertook a colonoscopy of the Appellant which was normal to the splenic flexure.

MPIC referred the Appellant's medical file on April 27, 2005 to [MPIC's doctor], MPIC's Health Care consultant, was requested to review the Appellant's claim and to provide an opinion on causation.

[MPIC's doctor's] Report of April 28, 2005:

[MPIC's doctor] provided a report to MPIC on April 28, 2005 and indicated that:

1. The Appellant saw [Appellant's neurologist] in December 2002 and his findings were normal.
2. The Appellant made no contact with MPIC until November 2004 at which time she contacted MPIC to inform that she had been diagnosed with fibromyalgia and that she felt that this was caused by the motor vehicle accident.
3. The Appellant indicated that she could not work due to the fibromyalgia.
4. The Appellant's medical report of July 2002 noted a diagnosis of mild neck strain and headache.
5. The next available report (the chiropractor's) of October 8, 2002 noted low back pain and numbness in some toes.

6. [Appellant's neurologist's] neurologic consultation of December 3, 2002 noted the absence of neurologic signs and he commented that the numbness in the toes was unlikely to be related to the motor vehicle accident.
7. [Appellant's doctor #3] concluded that the Appellant's fibromyalgia was caused by the motor vehicle accident:
8. There was no substantiation that the constellation of symptoms related to the motor vehicle accident.
9. [Appellant's doctor #3] began attending the client in November 2003, 1½ years after the motor vehicle accident, and almost 1 year following assessment with [Appellant's neurologist].
10. There was no evidence in the scientific literature to support that fibromyalgia syndrome is caused by trauma.
11. Although fibromyalgia presented as the current condition accounting for the client's presentation, a direct cause and effect relationship to the motor vehicle accident could not be established.

Case Manager's Decision:

The case manager wrote to the Appellant on April 29, 2005 and stated:

“This letter is to advise you that a complete review of your medical file has been done by our Health Care Services Team. The medical information reviewed indicates there is insufficient evidence to support a causal relationship between your current signs/symptoms and the motor vehicle accident of May 27, 2002.”

On May 5, 2005 [Appellant's doctor #3] documented the Appellant presented with a sinus infection, expressed some paranoid thinking. A mental health referral was initiated.

In a note dated May 9, 2005 [Appellant's doctor #6] documented a history of intermittent constipation dating back more than 10 years and reported it became worse in 2002.

On June 10, 2005 [Appellant's doctor #3] reported the Appellant presented with dysuria and urinary frequency.

Application for Review:

The Appellant made an Application for Review of the case manager's decision of June 29, 2005.

In her Application for Review the Appellant stated:

"I'm enclosing all Doctors reports and dates of appointments that I can think of for now. I also have a letter from [Appellant's doctor #2] (sic) whom was my family Doctor for 18 years up until 2002, confirming with that their (sic) was no signs of fibromyalgia during the years I seen (sic) him.

So looking at all signs and symptoms they have all occurred since the MVA I had in May of 2002. I believe everything shows and Doctors have confirmed my accident caused the suffering I've endured the past three years.

My struggle has been physically and emotionally draining especially during the time I did not know what was going wrong with me. And not only emotionally draining but financially also. Doctors visits, trying different meds, vitamins and so on.

This is **NOT** my fault! It was a **faulty tie-rod** in the motor vehicle that I was driving that had let go. I had no control over the vehicle."

On July 25, 2005 [Appellant's doctor #3] documented the diagnosis of irritable bowel symptoms and mild depression. Counselling was recommended. He noted the "patient still wants to have letter that will connect MVA with fibromyalgia".

On September 9, 2005 the Appellant requested that [Appellant's doctor #3] provide a letter to MPIC.

In a letter to MPIC of September 8, 2005 [Appellant's doctor #1] noted that:

- a) following the motor vehicle collision, the Appellant developed a number of symptoms including abdominal pain and bloating, fatigue, numbness in her toes and fluctuating muscle pain.
- b) He had discussed the possibility of fibromyalgia with the Appellant but had not had the opportunity to investigate this further prior to her move to [text deleted].

[MPIC's doctor's] Report of July 24, 2006:

At MPIC's request, [MPIC's doctor] provided a report on July 24, 2006 in which she set out a detailed a review of the entries received from all of the Appellant's treating physicians beginning in May 2002 through December 2005 and reported:

“The pre-accident medical documentation notes that back on October 25, 1996 the claimant reported a one year history of abdominal pain and bloating, as well as reporting some nausea and altering (sic) constipation and diarrhea. These symptoms continued through November 21, 1996 at which time medications were prescribed and investigations undertaken. The lower abdominal pain pattern continued through February 1997 when pain was associated with constipation. Notes in April and June 1997 noted recurrent lower abdominal pain, with chronic recurrent urinary tract symptoms. Constipation was again reported in January of 1998 and again in October of 1998. Through January of 1999, nausea and bloating continued to be reported and was again reported in September of 1999 when the claimant reported “continuing with lower abdominal cramps” and was diagnosed with “abdominal pain of unknown origin”. Documentation through 2000 noted a pregnancy with delivery in [text deleted] 2001. Through 2001 and into 2002, recurrent urinary symptoms were noted along with report of back pain in April 2002.

The chronological record notes a chronic, recurring history of abdominal pain with constipation pattern back to 1995. The record confirms a persistent presentation/difficulty with abdominal symptoms from 1995 through the latter part of 1999, at that time diagnosed as “abdominal pain of unknown origin”. The chronological record further notes the onset of abdominal symptoms beginning in January 2003 (7+ months post-motor vehicle collision). Although [Appellant's doctor #3] has provided an opinion that “the claimant's symptoms of irritable bowel symptoms as well as a diagnosis of fibromyalgia occurred after the May 2002 motor vehicle collision”, this statement does not equate with causation. The onset of the abdominal pain for which symptoms persisted through 2004, on a balance of probability, relate to a pre-existing tendency that began to appear again in January 2003. The appearance of these symptoms, which ultimately was diagnosed as irritable bowel syndrome and has subsequently been connected to the overall label of fibromyalgia (in conjunction with widespread muscles aches) is acknowledged. However, the onset of these symptoms 7+

months following a motor vehicle collision with a documented pre-accident predisposition does not, on a balance of probability, support a cause and effect relationship with the collision of May 2002." (Underlining added)

[Appellant's doctor #1] provided a report to MPIC on November 28, 2006 and stated:

"I saw this lady as a patient beginning in May 2002 until Oct 2003. Shortly after my first visit she had an MVA. After the MVA this patient had a number of new problems consistent with post MVA fibromyalgia. These complaints continued through October 2003 when I last saw her before she moved. From the (sic) her medical history from her previous doctor, and from discussing her medical problems with her, both before and after her MVA, she did not have her Fibromyalgia symptoms until after her MVA of May 2002. Fibromyalgia is a rare but definitely (sic) medically recognized condition that is possible after an MVA. I have discussed with the patient that there is a cause and effect relationship between her MVA and her fibromyalgia."

[MPIC's doctor] was requested to review [Appellant's doctor #1's] correspondence of November 28, 2006.

[MPIC's doctor's] Report of January 22, 2007

In response to [Appellant's doctor #1's] report, [MPIC's doctor] stated on January 22, 2007 that in her prior report of July 24, 2006 she had set out a detailed review of the chronological entries received from all the Appellant's treating physicians beginning in May 2002 through December 2005. [MPIC's doctor] reported that:

"... The pre-accident clinical record notes past episodes of chronic, recurring abdominal pain. Following the reappearance of abdominal pain in January 2003, an ultimate diagnosis of irritable bowel syndrome was made and was subsequently connected to the overall label of fibromyalgia. A label of fibromyalgia was advanced by [Appellant's rheumatologist #1] in November 2004 based on the history of diffuse aches and pains in multiple muscles and joints associated with sleep disturbance, general fatigue and symptoms of irritable bowel syndrome. As noted in the prior memorandum, this constellation of symptoms is not connected in the medical literature to any one specific etiology and that trauma, in of itself, is not supported in the literature as an established trigger."

[MPIC's doctor] indicated there was no change to her prior opinion that there was no causal relationship between the motor vehicle accident and the Appellant's fibromyalgia.

[Appellant's doctor #1] reported on April 30, 2007 that "if she is still suffering from fibromyalgia then I would have to say that the accident on May 27, 2002 was the cause".

Her family physician, [Appellant's doctor #2], reported on May 18, 2007 that "I agree fully with [Appellant's doctor #1] that the patient has symptoms consistent with fibromyalgia causing her diffuse muscle aching. She had no symptoms prior to the accident. It is therefore my medical opinion that her fibromyalgia syndrome was caused by the motor vehicle accident".

(Underlining added)

MPIC referred [MPIC's doctor] to [Appellant's doctor #1's] report of April 30, 2007 and [Appellant's doctor #2's] report of May 18, 2007 for her comments on whether there was change in her previously reported opinion on the issue of causality.

[MPIC's doctor's] Report of October 11, 2007:

[MPIC's doctor] rejected the opinions of [Appellant's doctor #1] and [Appellant's doctor #2] and stated:

1. As indicated in her previous reports the Appellant complained about soft tissue injuries since the motor vehicle accident.
2. Beginning in January 2003, the Appellant's complaints were related to bowel symptoms which persisted over many months.
3. In May of 2004, the Appellant reported generalized pain were documented and described as being very non-specific in nature.
4. It is on this basis that the Appellant was referred to the rheumatologist, [Appellant's rheumatologist #1], who ultimately diagnosed fibromyalgia syndrome in November 2004.

5. Although the diagnosis of fibromyalgia was determined at a time after the motor vehicle accident, this does not necessarily equate with a conclusion there is a causal relationship.
6. All the information available, specifically the chronological evolution of the Appellant's symptoms, did not indicate that a probable cause and effect relationship existed between the motor vehicle accident and the diagnosis of fibromyalgia syndrome.
7. The Appellant was evaluated by [Appellant's rheumatologist #2], a rheumatologist, on April 22, 2008. He was of the opinion that the Appellant had signs and symptoms of fibromyalgia.

[Appellant's doctor #2] wrote to MPIC on October 3, 2008 and stated:

“[The Appellant] is a patient of mine at the [text deleted] Clinic. She was seen by [Appellant's rheumatologist #2] in [text deleted] on April 22, 2008. I have enclosed a copy of his report, in which he states “she does, in fact, have signs and symptoms of fibromyalgia. She denied any musculoskeletal complaints before the mentioned accident”. [Appellant's rheumatologist #2's] report clearly states that the patient had no symptoms prior to the accident, strongly suggesting a causal relationship between the accident and her symptoms.

I would appreciate if you could take this information into account, as [the Appellant] was entirely asymptomatic in regard to fibromyalgia prior to her motor vehicle accident.”

[MPIC's doctor] was requested by MPIC to review [Appellant's doctor #2's] report of October 3, 2008 and [Appellant's rheumatologist #2's] report of April 22, 2008 and comment on whether the information changed her position on the issue of causality.

[MPIC's doctor's] Report of March 2, 2009:

[MPIC's doctor] indicated that the information provided by [Appellant's rheumatologist #2] supports a diagnosis of fibromyalgia syndrome based on the Appellant's presenting symptoms and signs. [MPIC's doctor] further stated that [Appellant's doctor #2], in his report, had

indicated that [Appellant's rheumatologist #2's] report strongly suggests a causal relationship between the diagnosis of fibromyalgia and the motor vehicle accident. [MPIC's doctor] stated:

"... In reviewing [Appellant's rheumatologist #2's] report, it is noted that he provided impression that the claimant's symptoms and signs were consistent with fibromyalgia and made medication suggestions. There was no specific comment made by [Appellant's rheumatologist #2] with respect to causation issues." (Underlining added)

Case Manager's Decision – March 12, 2009:

MPIC's case manager wrote to the Appellant on March 12, 2009 and indicated that MPIC had received the reports of [Appellant's doctor #2] dated October 3, 2008 and [Appellant's rheumatologist #2] of April 22, 2008. The case manager indicated that the reports were reviewed and they did not provide any new information to allow MPIC to make a fresh decision as contemplated by Section 171(1) of the MPIC Act. The case manager indicated that MPIC's position had not changed and could not support a causal relationship between the Appellant's current signs/symptoms and the motor vehicle accident of May 27, 2002.

MPIC received a further letter from [Appellant's doctor #2] on April 16, 2009 wherein he indicated the Appellant had been a patient of his clinic in his and [Appellant's doctor #7's] care and stated:

1. There was no mention of fibromyalgia symptoms prior to her motor vehicle accident.
2. Since the motor vehicle accident from a temporal point of view, the Appellant's symptoms were clearly related to the motor vehicle accident.
3. It was clearly established by a rheumatologist that the Appellant had fibromyalgia.
4. He had provided information showing her symptoms started at the date of the accident and in his view there was sufficient information available that fibromyalgia can be caused by trauma.

5. For this reason he felt there was enough evidence to support the Appellant's current medical condition of fibromyalgia was caused by the motor vehicle accident in 2002.

[Appellant's doctor #2] requested that the Appellant be given coverage for this condition as a result of the motor vehicle accident when her appeal takes place.

Application for Review – April 22, 2009:

The Appellant made an Application for Review of the case manager's decision of January 23, 2007.

Internal Review Officer's Decision:

The Internal Review Officer's decision dated June 5, 2009 rejected the Appellant's Application for Review and stated:

“The Health Care Services' opinion dated March 2, 2009 was attached to your case manager's decision letter, which discussed previous medical opinions on this very issue. It was noted that based on the review of the chronological evolution of your symptoms, it was felt that a cause and effect relationship was not probable between the collision itself and the assignment of the diagnosis of fibromyalgia syndrome. The Health Care Services doctor then went on to review the new information from [Appellant's rheumatologist #2] dated April 22, 2008 and from [Appellant's doctor #2] dated October 3, 2008. After review of that information, the Health Care Services doctor noted that there is support for a diagnosis of fibromyalgia syndrome based on your presenting symptoms and signs. However, it is noted that [Appellant's rheumatologist #2's] report of April 22, 2008 contains no conclusions that your fibromyalgia diagnosis is related to your motor vehicle accident. It is also noted that [Appellant's doctor #2's] correspondence of October 3, 2008, states that:

“[Appellant's rheumatologist #2's] report clearly states that the patient had no symptoms prior to the accident, strongly suggesting a causal relationship between the accident and her symptoms.”

This is not [Appellant's rheumatologist #2's] conclusion.

The opinion of the Health Care Services doctor that there is no probable cause and effect relationship between your collision and the assignment of the diagnosis of

fibromyalgia syndrome is supported by a review of the medical literature. The doctor notes:

“It is noted that opinion in the medical community varies greatly in this area, however, medical literature does not currently contain strong support for a traumatic basis in the genesis of fibromyalgia.”

In my review of the medical information on your file, taking into account the comments by [Appellant’s rheumatologist #2] and [Appellant’s doctor #2] specifically and also noting the comments of the Health Care Services doctor, I agree with the Health Care Services doctor. I reviewed the latest report from [Appellant’s doctor #2] and it does not change the information found in the Health Care Services opinion. As a result, I am confirming the case manager’s decision of April 29, 2005 and March 13, 2009 that your diagnosis of fibromyalgia syndrome is not related to injuries sustained in your motor vehicle accident of May 27, 2002 and as a result, I am dismissing your Application for Review.” (Underlining added)

Notice of Appeal:

The Appellant filed a Notice of Appeal of the Internal Review decision on July 7, 2009. The Appellant stated:

“In general there are lots of cases where Doctors have linked fibromyalgia to motor vehicle accidents specific to my case I have strong support from 3 Dr’s who have reviewed my case & file.”

Applicable Legislation:

The relevant provisions of the MPIC Act are:

70(1) In this Part,

"accident" means any event in which bodily injury is caused by an automobile;

Application of Part 2

71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

The Claimant Adviser wrote to [Appellant’s doctor #8] and requested a report on the diagnosis of the Appellant’s medical condition and whether on a balance of probabilities there was a causal relationship between the Appellant’s fibromyalgia and the motor vehicle accident of May 27,

2002.

[Appellant's doctor #8's] Report – October 3, 2012:

[Appellant's doctor #8] replied to the Claimant Adviser in a letter dated October 3, 2012 and set out his qualifications as follows:

“I am Royal College Certified in the Specialty of Physical Medicine and Rehabilitation [text deleted]. My clinical activities include [text deleted] work as an Attending Physician in the Pain Clinic.”

[Appellant's doctor #8] reported that he saw the Appellant on January 30, 2012 and based on the history provided by the Appellant, he reported:

“Based on the history provided by [the Appellant] and my physical exam on January 30, 2012, her findings were consistent with a diagnosis of fibromyalgia. Features that led me to this diagnosis include; chronic whole body pain involving the upper and lower extremities and the axial spine for greater than 3 months and widespread tenderness on palpation, including 16 of the 18 characteristic tender points present in fibromyalgia reported as painful with palpation. This was present in the absence of other abnormalities in the musculoskeletal system on examination. ...”

[Appellant's doctor #8] reported that the Appellant said she was working two hours a day [text deleted].

[Appellant's doctor #8] further reported:

“Based on the history I obtained from [the Appellant], she had no chronic pain complaints prior to her motor vehicle accident on May 27, 2002. The development of whole body chronic pain and a diagnosis of fibromyalgia came following the accident. This history is supported by the documents provided for my review including; the opinion of [Appellant's rheumatologist #1], a Rheumatologist, in November of 2004, the opinion of [Appellant's rheumatologist #2] in 2008 and supporting letters from [Appellant's doctor #1] and the patient's family physician [Appellant's doctor #2]. Given that trauma is an accepted trigger for fibromyalgia and these symptoms developed after a significant trauma, based on a balance of probabilities there is a causal relationship between the motor vehicle accident of May 27, 2002 and her current symptoms...” (Underlining added)

[Independent physiatrist], a physiatrist with [text deleted], was requested by MPIC to provide a third party medical examination.

[Independent physiatrist's] Report of March 28, 2013:

In his March 28, 2013 report, [independent physiatrist] indicated the reasons for the referral were:

- “To provide an opinion on:
- “the most probable diagnosis of the claimant’s condition, if any, as relating to the motor vehicle accident;”
 - Whether “there is a causal relationship between the fibromyalgia and the MVA and to explain your rationale.”

[Independent physiatrist] obtained a history from the Appellant, performed a physical examination and reviewed the reports of her medical practitioners in the period following the motor vehicle accident and concluded:

1. As a result of the motor vehicle accident the Appellant suffered Whiplash-Associated Disorder Type II.
2. The chronic pain the Appellant is currently suffering occurred several months following the May 27, 2002 motor vehicle accident is not connected to the motor vehicle accident.

[Independent physiatrist] reported that in his interview with the Appellant he noted:

“Now she reports pain “everywhere”. When asked to expand upon the location of her pain, she volunteered that she has pain affecting her ribs bilaterally, both anterior thighs, both knees, both feet and the medial aspect of both arms. She was then asked whether she had any pain affecting some random sites. Among this list, she endorsed that she had pain affecting her teeth and her hair.

Her pain symptoms are present all the time and have been like this ever since her 2002 collision. She describes these symptoms “like someone beat you up”. She notes that walking seems to relieve her pain and she becomes stiff when sitting too long.” (Underlining added)

[Independent physiatrist] further reported that in the first seven months following the May 27, 2002 motor vehicle accident there are only four medical records he reviewed which indicated

that the Appellant suffered from mild soft tissue injuries consistent with Whiplash-Associated Disorder Type II. He referred to the four medical records as follows:

1. Ambulance Patient Care Report – complaints of soft tissue injuries.
2. Report of [Appellant’s doctor #1], July 22, 2002 – symptoms documented as “headaches, light-headedness, numbness in toes and sore neck”. [Independent physiatrist] noted that this diagnosis was consistent with a Whiplash-Associated Disorder Type II. (Underlining added)
3. Report of [Appellant’s chiropractor], chiropractor, October 8, 2002 – a diagnosis of “whiplash with a 5th lumbar disc herniation”. [Independent physiatrist] noted that there were no findings to confirm the diagnosis of lumbar disc herniation. (Underlining added)
4. Assessment by neurologist [Appellant’s neurologist] on December 3, 2002 – who reported:

“has no pain or weakness in her legs, neurological symptoms in her upper limbs, pain anywhere along her spine, bladder or bowel disturbances,.....or any symptoms above her cervical spine apart from chronic non-descriptive and non progressive headaches.”
5. [Appellant’s neurologist] noted the neurological examination was normal and her condition was unrelated to the 2002 motor vehicle accident.

[Independent physiatrist] reported stated (sic) that:

1. The four medical reports documented a diagnosis consistent with Whiplash-Associated Disorder Type II and were inconsistent with a diagnosis of fibromyalgia.
2. “...The next clinical record is not until the spring of 2004 (approximately 2 years after the motor vehicle collision). As such, the determination of the injuries, if any, sustained in the motor vehicle collision, is largely based on these four records.

The initial evaluation by the ambulance crew is consistent with local soft tissue injuries affecting the right forearm and leg. The subsequent evaluation from [Appellant's doctor #1], almost 2 months later, is more consistent with a Whiplash-Associated Disorder Type II without evidence of widespread symptoms or neurologic abnormalities.

New symptoms of bilateral lower limb numbness developed sometime later as documented by [Appellant's chiropractor] approximately 5 months following the motor vehicle collision. Since they are not noted by [Appellant's doctor #1] at 2 months post-injury, it is unlikely that they were present 2 weeks following the collision. This is inconsistent with the history provided to [Appellant's neurologist] when the claimant noted that the symptoms have been present since the motor vehicle collision. Notwithstanding [Appellant's chiropractor's] opinion that the claimant had a lumbar disc herniation, there are no imaging findings to confirm this diagnosis. Even so, the unremarkable history and normal neurological examination documented by [Appellant's neurologist] would be inconsistent with a disc herniation.

In summary, within the first seven months following the motor vehicle collision, there is no evidence of a widespread pain disorder manifesting as weakness or tenderness.”
(Underlining added)

In this report [independent physiatrist] referred to the American College of Rheumatology (ACR) who noted the following criteria in respect of fibromyalgia:

- “- A history of widespread pain involving all four quadrants.
- A minimum duration of three months. (Underlining added)
- The presence on physical examination of 11 of 18 tender points at specifically designated loci.”

[Independent physiatrist] also reported that:

1. The first documented diagnosis of fibromyalgia occurred as a result of an assessment by [Appellant's rheumatologist #1] on November 22, 2004, which was a period of 2½ years following the motor vehicle accident.
2. [Appellant's rheumatologist #1's] report was the first documentation of widespread pain syndrome and given their previous absence at the time of [Appellant's neurologist's] evaluation in December 2002, suggests that these symptoms must have evolved sometime between December 2002 and November 2004.
3. The Appellant's history of her symptoms following the motor vehicle accident were

unreliable and inconsistent with the medical information on file.

4. [Appellant's doctor #8] had asserted that the Appellant's history of whole body chronic pain and diagnosis of fibromyalgia following the motor vehicle accident are supported by [Appellant's rheumatologist #1] in 2004, [Appellant's rheumatologist #2] in 2008, as well as [Appellant's doctor #1], [Appellant's doctor #2] and [Appellant's doctor #3].

[Independent physiatrist] also indicated that the reports of [Appellant's doctor #1], [Appellant's doctor #2], and [Appellant's doctor #3] do not provide a basis for concluding there was a causal link between the motor vehicle accident and fibromyalgia for the following reasons:

1. [Appellant's doctor #3's] report of March 3, 2005 indicated he first saw the Appellant on November 18, 2003 (approximately 18 months following the motor vehicle accident). [Appellant's doctor #3] concluded:

"In my professional opinion this patient's symptoms of IBS as well as of fibromyalgia did occur after the MVA that she sustained in 2002."
2. [Appellant's doctor #1] only notes the Appellant's symptoms began sometime after the motor vehicle accident. [Appellant's doctor #1] did not provide sufficient evidence to establish a causal relationship between the motor vehicle accident and the Appellant's label of fibromyalgia.
3. [Appellant's doctor #2's] records indicated that on July 4, 2002 he saw the Appellant and reported that she suffered a "concussion and whiplash".
4. [Appellant's doctor #2's] records further indicated that on July 17, 2002 the Appellant saw him again and reported lower back pain. The Appellant reported headaches, dizziness, irritability and numbness of the great toes bilaterally.
5. [Appellant's doctor #2] further reported on August 6, 2002 the Appellant complained of suprapubic pain, urinary frequency and fatigue.

6. On March 13, 2005 [Appellant's doctor #2] provided a one paragraph letter to the Appellant noting that he reviewed her file at the [text deleted] Clinic and stated:

“There is no evidence of fibromyalgia anywhere in your file. I.e. during the time you were with our Clinic there is no mention of fibromyalgia or fibromyalgia like symptoms.”

7. In his report of February 4, 2014 [Appellant's doctor #2] stated:

“Rather, the label is applied as having been previously confirmed by other physicians. It is noted that [Appellant's doctor #2] did not attend the claimant until approximately 5 years following the motor vehicle collision in question.”

[Independent physiatrist] further reported:

“Since there are discrepancies between the claimant's account of when the symptoms began (she asserts that they began within days-weeks of the motor vehicle collision) and the file record, which does not note any such widespread symptoms until after December 2002 at the very earliest, one cannot simply rely on the temporal relationship to establish a medically probable cause and effect relationship between the claimant's widespread pain symptoms (by whatever label) and the motor vehicle collision. (Underlining added)

None of the clinicians supporting the notion of fibromyalgia reconcile the virtual absence of widespread symptoms within the first seven months of the collision with the claimant's version of the history...

The current evaluation documents a number of clinical findings that cannot be explained by anatomic or physiologic principles including:

- A history of pain at sites not typically associated with fibromyalgia (teeth, hair)
- A likelihood that the endorsement of pain at such sites implies suggestibility
- Tenderness to palpation at sites not typically linked to fibromyalgia (gently rolling the skin and subcutaneous fat overlying the iliac crests, underlying the ribs and in the axillary folds)
- Inconsistent tenderness to palpation at fibromyalgia tender point loci
- Tenderness with list (sic) pressure that is insufficient to blanch the skin
- Widespread and significant “weakness” that would be consistent with profound neuromuscular disease that is situational (present only on manual muscle testing) and not present with functional tasks such as gait, squats, heel (sic)/toe walking, etc.

The above features suggest that the “physical” examination of claimant is not a valid barometer of her of condition. In addition, and without implying an intention to deceive, it does not appear that the claimant is a reliable historian. This is inferred from the discrepancies in her timeline and the likelihood that she is suggestible when presented with questions about the nature of her pain symptoms.

In summary, on a balance of probability and with a reasonable degree of medical certainty, a medically probable cause and effect relationship between the motor vehicle collision of May 27, 2002, and the label “fibromyalgia” has not been established. This conclusion is supported by:

- The medically improbable temporal relationship between the evolution of the claimant’s widespread pain and the motor vehicle collision
- The numerous additional clinical features described above which are neither consistent with criteria established for the label fibromyalgia nor motor vehicle collision-related trauma” (Underlining added)

On May 31, 2013 the Claimant Adviser wrote to [Appellant’s doctor #8], provided him with a copy of [independent physiatrist’s] report of March 28, 2013 and asked him to comment on [independent physiatrist’s] examination and conclusions, including:

1. The issue of the lapse of approximately seven months between the motor vehicle accident and the first reports of full body pain symptoms; and,
2. The issue of [independent physiatrist’s] clinical findings which he opined were inconsistent with and cannot be explained by a diagnosis of fibromyalgia or motor vehicle accident related trauma.

[Appellant’s doctor #8] Report – August 12, 2013;

In response to the issue of the seven months time lapse, [Appellant’s doctor #8] stated:

“While she reports that “I didn’t know what was wrong with me. He told me to avoid heavy stuff”, these were the first signs of pain following the accident and as such are temporally related to the motor vehicle accident in a period of time much shorter than the suggested 7 months. Moreover, [the Appellant] denies any chronic pain conditions prior to the May 27, 2002 accident, as noted in [independent physiatrist’s] report.”

[Appellant’s doctor #8] also disagreed with [independent physiatrist’s] comments that the Appellant’s tinnitus, loss of balance and numbness in both hands and feet are inconsistent with fibromyalgia. and stated that these symptoms can be attributed to a diagnosis of fibromyalgia.

[Appellant's doctor #8] also asserted that:

1. The Appellant's symptoms are consistent with a diagnosis of fibromyalgia.
2. He disagreed with [independent physiatrist's] view that the diagnosis of fibromyalgia is not a legitimate diagnosis and that the name of the condition placed on these symptoms is actually immaterial.
3. [Independent physiatrist] has not presented an alternative diagnosis in this case and only refutes that fibromyalgia is the cause of the Appellant's symptoms.

[Independent physiatrist's] Report – September 16, 2013:

In response to [Appellant's doctor #8's] report of August 12, 2013, [independent physiatrist] wrote to MPIC on September 16, 2013 and commented that although [Appellant's doctor #8] has accepted the Appellant's history and supporting documents from physicians written from 2004 and after, the clinical record within the first several months following the motor vehicle collision does not reveal widespread pain following the motor vehicle collision. [Independent physiatrist] stated:

"... This complaint does not appear until sometime in 2004. As such, the temporal relationship between the onset of widespread symptoms and the motor vehicle collision is inappropriate with respect to establishing a causal link." (Underlining added)

[Independent physiatrist] further reported that:

1. His clinical notes indicated the Appellant reported she had pain "everywhere".
2. As a result of his examination he concluded that the clinical findings were inconsistent with having pain everywhere.
3. "... Since she responded positively to all sites, including her teeth and her hair, without any negative responses, one may infer that she is either suggestible or exaggerates." (Underlining added)
4. "In his conclusion, [Appellant's doctor #8] notes that an alternative diagnosis, other than fibromyalgia, has not been presented. In the first instance, the absence of an

alternative diagnosis, does not offer evidence in favour of fibromyalgia. Secondly, the claimant's clinical presentation would be more consistent with a choric (sic) pain disorder than the syndromal diagnosis of fibromyalgia.

In summary, the temporal relationship between the onset of the claimant's widespread pain and the motor vehicle collision remains inappropriate with respect to establishing a causal link between the claimant's current condition and motor vehicle collision of May 27, 2002. Secondly, the claimant's clinical presentation, including her history and physical examination, are unhelpful in establishing an anatomic or physiologic cause of her symptoms." (Underlining added)

MPIC wrote to [MPIC's doctor] and provided her with the reports of [independent physiatrist] and [Appellant's doctor #8] and asked whether the new medical information altered her previous opinion and also whose opinion she preferred.

[MPIC's doctor's] Report – September 23, 2013:

[MPIC's doctor] responded on September 23, 2013 and stated:

"The chronological documentation as laid out in the prior Health Care Services' memoranda and summarized above does not substantiate, on a balance of probability, that a diagnosis of fibromyalgia in 2004 relates directly to the motor vehicle collision of May 2002. It is more probable that the injury sustained as result of the May 2002 collision was in the realm of a whiplash injury. The presentation of genitourinary symptoms (August/September 2002) and gastrointestinal symptoms in January 2003 and progressing through 2003 and 2004 with subsequent presentation of widespread pain in 2004 does not, on a balance of medical probability, relate to the motor vehicle collision circumstances of May 2002." (Underlining added)

[MPIC's doctor] stated that after reviewing [Appellant's doctor #8's] and [independent physiatrist's] reports:

1. She agreed with [independent physiatrist's] opinion on the issue of causality on the basis that his evaluation took into consideration the medical documentation in addition to the history provided by the Appellant and the physical examination.
2. [Independent physiatrist's] assessment considered the totality of the medical documentation and the chronological evaluation of the symptoms.

3. In contrast, [Appellant's doctor #8's] assessment predominantly considered the history provided retrospectively by the Appellant and did not include a detailed review of the chronological medical documentation available in the MPIC file.
 4. The Appellant's complaints from 2004 are consistent with the label of fibromyalgia but that does not equate with causation.
 5. She agreed with [independent physiatrist's] opinion that the medical practitioners who supported the Appellant's opinion that there was a causal relationship based their opinions on the Appellant's symptoms after the motor vehicle accident.
 6. She agreed with [independent physiatrist] who reported that most of the clinicians who stated there was a causal connection did not attend the Appellant until several months following the motor vehicle accident.
 7. As a result, they were not in a position to personally evaluate the Appellant's condition and its evolution over time.
 8. She asserted that these physicians based their conclusion on the evolution of her health status entirely based on her personal history without the opportunity of examining records in the first year following the motor vehicle accident.
 9. As a result, these physicians were not in a position to evaluate the Appellant's historical accounts and determine the appearance of symptoms after the motor vehicle accident represented a medically probable temporal relationship.
- She agreed with [independent physiatrist's] conclusion that the discrepancies between the Appellant's account of widespread symptoms occurring within days or weeks of the collision are inconsistent with the medical records which do not note any such widespread symptoms until after December 2002.

[MPIC's doctor] concluded by stating:

“It is my opinion that the evidence that should be weighed most heavily is the record of chronological documentation as opposed to the fact that the presentation of myalgia occurred at a point following the collision.”

On December 12, 2013, [Appellant’s doctor #2] wrote to the Claimant Adviser and provided further information regarding the Appellant. [Appellant’s doctor #2] stated that:

The Appellant’s fibromyalgia rendered her totally disabled from performing any kind of work during the period since May 27, 2002. The accident left her primarily with chronic pain and chronic fatigue with the result that she was totally disabled from doing any work since May 27, 2002.

On February 4, 2014 MPIC requested [independent physiatrist] to comment on the clinical notes of [Appellant’s doctor #2] for the period January 17, 2007 to December 12, 2013 and on his letter of December 12, 2013.

[Independent physiatrist’s] Report – February 4, 2014:

[Independent physiatrist] responded on February 4, 2014 and stated:

“A review of [Appellant’s doctor #2’s] records reveals that there are no direct examinations of the claimant for fibromyalgia. Rather, the label is applied as having been previously confirmed by other physicians. It is noted that [Appellant’s doctor #2] did not attend the claimant until approximately 5 years following the motor vehicle collision in question. There is also noted that [Appellant’s doctor #2] acknowledges that 2 different rheumatologist run (sic) able to provide an opinion that established a causal link between the claimant’s clinical condition, labelled this fibromyalgia, and the motor vehicle collision in question.”

[independent physiatrist’s] Report – February 28, 2014:

In a further response to MPIC’s letter of February 24, 2014, [independent physiatrist] wrote to MPIC on February 28, 2014 and indicated that he had received the 92 tabbed documents contained in the Automobile Injury Compensation Appeal Commission’s (AICAC) binder.

[Independent physiatrist] reviewed a number of reports provided by the Appellant's physicians as follows:

- Undated (probably May 27, 2002) – Nursing Triage note from [hospital]
- May 27, 2002 – Emergency Record from [hospital]
- July 19, 2002 – letter from the MPI case manager to the claimant, and
- July 22, 2002 – Application for payment of expenses from the claimant.

[Independent physiatrist] stated:

“On January 19, 2004 [Appellant's doctor #3] wrote a referral to physiotherapy with a referring diagnosis of “*Chronic Neck Sprain After Whiplash injury 1 year back.*”

...On June 1, 2004, [Appellant's doctor #3] wrote a letter to [Appellant's rheumatologist #3], a rheumatologist in [text deleted], to assess the claimant for her joint complaints in her hands and shoulders. He noted that he had done bloodwork to look for inflammatory causes. He subsequently redirected this letter of referral to [Appellant's internal medicine specialist] on September 17, 2004 and then again on October 8, 2004, redirected it to [Appellant's rheumatologist #1].”

On November 16, 2004, MPIC documented a conversation with the Appellant:

“...The claimant apparently advised that she had been diagnosed with fibromyalgia by [Appellant's doctor #3] and was being referred to a rheumatologist to evaluate this diagnosis. She also advised the case manager that she was apparently deemed to be permanently disabled by [Appellant's doctor #3] and was incapable of working at any job.”

[Appellant's rheumatologist #1's] letter of November 22, 2004 was the first documentation of widespread pain symptoms which were diagnosed by [Appellant's rheumatologist #1] as fibromyalgia and results in a 2.5 year temporal gap between the motor vehicle accident and [Appellant's rheumatologist #1's] diagnosis. [Independent physiatrist] stated:

“...Such a gap in time would be inappropriate to establish a medically probable causal and effect relationship between the claimant's widespread symptoms and the motor vehicle collision.

On March 13, 2005, [Appellant's doctor #2] wrote a one paragraph letter to the claimant noting that he had reviewed her file at the [text deleted] Clinic noted that "*there is no evidence of fibromyalgia anywhere in your file.*"

[Independent physiatrist] indicated that [Appellant's doctor #2's] clinical notes spanned the time from September 8, 1995 to October 3, 2003 and no record of widespread pain complaints between these two dates were noted. [Independent physiatrist] stated that this confirmed that as of October 3, 2003, approximately 18 months following the motor vehicle accident, there is no evidence of widespread pain complaints that could be labelled as fibromyalgia.

[Independent physiatrist] further stated:

"On September 13, 2005, [Appellant's doctor #3] wrote to the claimant indicating that he had first attended the claimant on November 18, 2003 and continue to see her up to the present time. He stated, "*since my initial visit with [the Appellant] she has had symptoms and complaints that fit with fibromyalgia.*"

Although it is somewhat unusual that [Appellant's doctor #3] does not use the term "fibromyalgia" in his January 19, 2004 physiotherapy referral, or his three letters to three different rheumatologist (sic) later on in June, September and October 2004, his retrospective impression that the claimant had symptoms consistent with fibromyalgia in November 2003 suggests a temporal gap of approximately 18 months between the motor vehicle collision and the later emergence of these symptoms. This length of time is inappropriately lengthy to establish a medically probable cause and effect relationship between the motor vehicle collision and the syndrome labelled as fibromyalgia."

[Independent physiatrist] concluded:

"At best, the claimant's healthcare practitioners confirm that the claimant's widespread pain, labelled as fibromyalgia, emerged following her motor vehicle collision on May 27, 2002. This is accurate. A review of all the records available, confirm that such symptoms emerged at the earliest, eighteen months following the motor vehicle collision and definitively more than seven months following the motor vehicle collision."

Appeal Hearing:

The hearing was held on April 21, 22, 23 and 24, 2015. The Appellant was represented by [text deleted] of the Claimant Adviser Office. MPIC was represented by [text deleted]. The

Commission heard testimony from the Appellant, [Appellant's doctor #2], [Appellant's doctor #8] and [independent physiatrist].

The Appellant's Testimony:

The Appellant testified at the hearing and stated:

1. She was involved in a motor vehicle accident on May 27, 2002 and she suffered injuries.
2. She was taken to the hospital and did not feel well.
3. She had difficulty walking, had pain to her back and ribs and that she wore a neck brace for six months.
4. The day after the motor vehicle accident she felt sore and bruised and had a sore neck.
5. She saw [Appellant's doctor #2] approximately in the week following the motor vehicle accident and complained of sore legs, arms, ribs, lower back, and neck and difficulty turning her head.
6. She suffered from fatigue one week after the motor vehicle accident and she still suffers from this fatigue, but it is now somewhat better.
7. She was able to do housework and her husband did the cooking.
8. She moved to [text deleted] and saw [Appellant's doctor #3] on a regular basis.
9. She subsequently returned to [text deleted] and saw [Appellant's doctor #2].
10. She was able to do light housework and laundry and her husband did the cooking.
11. She continued to feel fatigued, but is about 30% better and is not as fatigued as she was previously and now suffers fatigue only a couple of hours per day.
12. She is able to do some housework.
13. She typically wakes at 7:00 a.m., drives her daughter to the school bus and leaves around 10:30 a.m. to work at [text deleted].

14. She picks her daughter up at 3:30, cooks dinner and then lays down between 5:30 and 7:00 p.m. and goes to bed between 10:00 and 11:00 p.m.
15. She does her own shopping and limits her purchases to avoid heavy packages.
16. Her pain is localized and she takes medication in the evening.
17. She suffers from pain everywhere but denies that she had pain in her teeth and hair.
18. She informed [independent physiatrist] that she had pain in the top of her head and did not have any pain in her hair.
19. She misunderstood [independent physiatrist's] questions in this respect.
20. She started having chronic abdominal symptoms after the motor vehicle accident and these symptoms were not chronic before the motor vehicle accident. She feels bloated all the time and takes a lot medication for constipation.
21. Prior to the motor vehicle accident she worked full time [text deleted] but is now unable to work.

[Appellant's doctor #2's] Testimony:

[Appellant's doctor #2] testified at the hearing and stated:

1. He was the Appellant's family doctor and he saw her prior to and after the motor vehicle accident.
2. Her symptoms were of a generalized nature.
3. There was no mention in his chart notes of fibromyalgia or fibromyalgia-like symptoms.
4. He was referring to the period prior to the motor vehicle accident although he conceded that it could have been interpreted otherwise.
5. He referred to his chart notes between July and August 2002 and noted the symptoms were consistent with a diagnosis of fibromyalgia.
6. In his letter to MPIC dated April 16, 2009, he noted he was informed by the rheumatologist

who examined the Appellant that she does in fact have fibromyalgia.

7. He acknowledged that he did not diagnose the Appellant's fibromyalgia until he received the rheumatologist's, [Appellant's rheumatologist #1], report of November 2004.

[Appellant's doctor #8's] Testimony:

[Appellant's doctor #8] testified at the hearing and extensively reviewed the reports he had filed and commented on the report of [independent physiatrist] and [MPIC's doctor]. He further testified that:

1. He assessed the Appellant on January 30, 2012 and concluded that her symptoms were consistent with fibromyalgia and were caused by the motor vehicle accident of May 27, 2002.
2. The Appellant had no chronic complaints prior to the motor vehicle accident, however, subsequent to the motor vehicle accident the Appellant complained of whole body chronic pain which was consistent with fibromyalgia.
3. This history of the Appellant is supported by the opinions of [Appellant's rheumatologist #1], and [Appellant's rheumatologist #2], and the supporting letters of [Appellant's doctor #1] and [Appellant's doctor #2].
4. Trauma is an accepted trigger for fibromyalgia and these symptoms developed after significant trauma and based on the balance of probabilities, there is a causal relationship between the motor vehicle accident of May 27, 2002 and the Appellant's current symptoms.

[independent physiatrist's] Testimony:

[Independent physiatrist] testified that:

1. He disagreed that the motor vehicle accident caused the Appellant's fibromyalgia.

2. Based on his review of the medical reports in the first seven months following the motor vehicle accident indicated that as a result of the motor vehicle accident, the Appellant suffered from soft tissue injuries consistent with a whiplash injury.
3. The first documented diagnosis of the Appellant's fibromyalgia was documented by [Appellant's rheumatologist #1] in November of 2004, a period of 2 ½ years after the motor vehicle accident.
4. The reports of the medical practitioners who treated the Appellant after the motor vehicle accident established that the motor vehicle accident caused the Appellant's fibromyalgia.
5. He disagreed with [Appellant's doctor #8] who concluded that these medical practitioners supported his opinion that there was a causal connection between the Appellant's fibromyalgia and the motor vehicle accident.
6. The Appellant's history of her complaints following the motor vehicle accident were inconsistent with her report that she suffered from pain all over immediately after the motor vehicle accident.
7. The Medical reports following the motor vehicle accident were inconsistent with the Appellant's complaints.
8. He disagreed with [Appellant's doctor #8] who relied on the Appellant's history and as a result had concluded that there was a causal relationship between the motor vehicle accident and the Appellant's fibromyalgia.
9. He agreed with [Appellant's doctor #8] that trauma could cause fibromyalgia but that the trauma resulting from the motor vehicle accident did not cause the Appellant's fibromyalgia.
10. Contrary to [Appellant's doctor #8's] opinion, fibromyalgia was not a legitimate label and he preferred to describe the Appellant's condition as chronic pain syndrome.

Submission of the Appellant:

The Claimant Adviser submitted that based on the history obtained from the Appellant and a review of the medical reports of [Appellant's doctor #1], [Appellant's doctor #2], [Appellant's rheumatologist #2], [Appellant's rheumatologist #1] and [Appellant's doctor #3], [Appellant's doctor #8] concluded that on a balance of probabilities that there was a causal relationship between the motor vehicle accident of May 27, 2002 and the Appellant's current fibromyalgia symptoms.

[Appellant's doctor #8] testified that:

1. In his experience trauma caused by a motor vehicle accident can be a trigger for the onset of fibromyalgia.
2. This view is supported by the Canadian fibromyalgia consensus document published in the Journal of Musculoskeletal Pain in 2003.
3. [Independent physiatrist] agreed with his position that trauma could trigger fibromyalgia.
4. [MPIC's doctor] did not agree with his position in respect of trauma causing fibromyalgia.

[Appellant's doctor #8] testified that in order to establish a diagnosis of fibromyalgia, the diagnosis requires a minimum of three months of symptoms, or much longer, due to the necessity of ruling out other possible causes for the pain.

Contrary to [independent physiatrist's] opinion, [Appellant's doctor #8] referred to the following medical reports describing the Appellant's symptoms following the motor vehicle accident that were consistent with the onset of fibromyalgia:

1. [Appellant's doctor #1's] report of July 22, 2002 which identified "headaches, light-headedness, and numbness in toes, sore neck". [Appellant's doctor #8] referred to [Appellant's doctor #1's] chart notes and to an entry dated September 3, 2002 which documents sciatica, numbness in toes and an entry dated April 17, 2003 which documents "Very tender (R) mid back/flank ribs" and "Chest wall pain".
2. [Appellant's chiropractor's] Initial Care Report of October 8, 2002 which reported lumbar pain, pain radiating from low back to large toes both sides and basic stiffness.
3. [Appellant's neurologist] reported on December 3, 2002 that the Appellant was complaining of numbness in her toes which had begun about 2 weeks following the motor vehicle accident.

[Appellant's doctor #8] also referred to the following reports that support his position that the motor vehicle caused the Appellant's fibromyalgia:

1. [Appellant's internal medicine specialist's] report of October 9, 2003 noted that the Appellant was feeling fatigued, which is a symptom of fibromyalgia according to [Appellant's doctor #8].
2. [Appellant's rheumatologist #1's] report of November 22, 2004 provided a definitive diagnosis of fibromyalgia. The Claimant Adviser submits that although this diagnosis is 2½ years following the motor vehicle accident, there was a continuity of symptoms dating from the time of the motor vehicle accident relating to pain and stiffness in the neck, headaches and numbness in the toes.
3. On September 8, 2005 [Appellant's doctor #1] reported "After the MVA I saw this patient with a number of complaints, especially abdomen pain and bloating, fatigue, numbness in her toes and fluctuating muscle pain."

4. [Appellant's doctor #1's] letter of November 28, 2006 stated "After the MVA this patient had a number of new problems consistent with post MVA fibromyalgia. These complaints continued through October 2003 when I last saw her before she moved."
5. [Appellant's doctor #3] stated that he had seen the Appellant since November 18, 2003 and since the initial visit she had symptoms and complaints that fit with fibromyalgia.
6. [Appellant's doctor #2's] letter of May 18, 2007 stated that in his opinion the motor vehicle accident of May 27, 2002 is responsible for the Appellant's fibromyalgia. He reiterated this opinion in his testimony at the hearing.
7. [Appellant's rheumatologist #2's] diagnosis of fibromyalgia on April 22, 2008, 6 years following the motor vehicle accident.

The Claimant Adviser also submitted that:

1. The diagnosis of fibromyalgia as determined by both [Appellant's rheumatologist #1] and [Appellant's rheumatologist #2] supported the opinions of [Appellant's doctor #1], [Appellant's neurologist] and [Appellant's doctor #2] that within months following the motor vehicle accident the Appellant was complaining of symptoms which were consistent with the diagnosis of fibromyalgia by the beginning of 2003.
2. [MPIC's doctor] accepted that fibromyalgia is a legitimate diagnosis and [MPIC's doctor] determined the Appellant was suffering from symptoms consistent with a diagnosis of fibromyalgia by the beginning of 2003.
3. [Appellant's doctor #8's] report of August 12, 2013 noted [independent physiatrist] stated that the Appellant reported:
 - a. Right frontal and bi-retro-orbital headaches.
 - b. Tinnitus, loss of balance, and numbness in both hands and feet.
 - c. Regular fatigue that is somewhat better now.

4. These symptoms could be attributed to a diagnosis of fibromyalgia.
5. A pattern of the Appellant's migratory pain complaints beginning within a couple of months following the motor vehicle accident and continuing throughout the rest of 2002. By early 2003 even [MPIC's doctor] agreed that the symptoms supported a diagnosis of fibromyalgia.

The Claimant Adviser, in his submission:

1. Was critical of [independent physiatrist's] position of rejecting the diagnosis of fibromyalgia as a legitimate diagnosis and who had provided an alternative diagnosis of a chronic pain disorder.
2. Noted that [Appellant's doctor #8] had testified that:
 - a. A diagnosis of chronic pain disorder is a psychiatric diagnosis rather than a physical medical diagnosis and as a physiatrist, [independent physiatrist] was not qualified to provide a psychiatric diagnosis.
 - b. [Independent physiatrist's] opinion that the Appellant only suffered a whiplash type injury as a result of the motor vehicle accident should be rejected, along with his diagnosis of a chronic pain disorder.

The Claimant Adviser further submitted that:

1. [Independent physiatrist] and [MPIC's doctor] erred in concluding that the Appellant was not a reliable historian in reporting her symptoms to her doctors.
2. The Appellant reported numbness in her lower limbs, specifically her toes, twice to [Appellant's doctor #1] and once to [Appellant's doctor #2] and again to [Appellant's chiropractor] and a month or two later to [Appellant's neurologist], all during the final seven months of 2002.

3. The consistent reporting of numbness of the Appellant's legs demonstrates that the Appellant is not an unreliable historian.

The Claimant Adviser also challenged [independent physiatrist's] opinion that the Appellant had exaggerated her symptoms. He asserted that:

1. [Appellant's doctor #2], [Appellant's doctor #1] and [Appellant's doctor #3] met with the Appellant on a number of occasions and accepted her complaints as legitimate and found her to be credible.
2. The Appellant did not immediately seek to obtain Personal Injury Protection Plan ("PIPP") benefits for her fibromyalgia and when she was informed that she had a fibromyalgia condition, she made no claim for these benefits until 2005.

In conclusion, the Claimant Adviser submitted that:

1. [Appellant's rheumatologist #1] and [Appellant's rheumatologist #2] confirmed the Appellant had developed fibromyalgia.
2. Three family doctors and two specialists in rheumatology as well as [MPIC's doctor] all diagnosed the Appellant with fibromyalgia.
3. The family doctors and [Appellant's doctor #8] linked the Appellant's fibromyalgia to the motor vehicle accident.
4. [Independent physiatrist] and [MPIC's doctor] erred in the manner in which they assessed the Appellant's complaints following the motor vehicle accident and erred in concluding that the Appellant's history was inconsistent with the development of fibromyalgia as a result of the motor vehicle accident.

5. The Appellant has established on a balance of probabilities there is a causal relationship between the motor vehicle accident and her fibromyalgia and that the Appellant's appeal be allowed.

MPIC's Submission:

MPIC submitted that:

1. The Appellant has failed to establish on a balance of probabilities that there was a causal connection between the Appellant's fibromyalgia and the motor vehicle accident.
2. [MPIC's doctor] and [independent physiatrist] were correct in concluding the first documented diagnosis of fibromyalgia was advanced by [Appellant's rheumatologist #1] in November 2004, approximately 2½ years after the motor vehicle accident.
3. [MPIC's doctor] and [independent physiatrist] were correct in concluding that the Appellant's fibromyalgia was not caused by the motor vehicle accident and evolved in a period after [Appellant's neurologist's] report of December 3, 2002.

MPIC submits that the Commission should accept the medical opinions of [MPIC's doctor] and [independent physiatrist], as well as the testimony of [independent physiatrist], in determining that as a result of the motor vehicle accident the Appellant suffered soft tissue injuries consistent with Whiplash-Associated Disorder Type II and that the Appellant did not suffer from injuries consistent with fibromyalgia.

MPIC submitted that [independent physiatrist]:

1. Agreed with [Appellant's doctor #8] that a diagnosis of fibromyalgia following a traumatic incident such as a motor vehicle accident could not be determined unless three months had elapsed after the motor vehicle accident and probably after seven months.

2. Met with the Appellant, reviewed all the medical reports and concluded there was no medical evidence consistent with fibromyalgia between the motor vehicle accident on May 27, 2002 and [Appellant's neurologist's] assessment on December 3, 2002 (a period of 6 months after the motor vehicle accident).
3. Concluded that in the absence of a diagnosis of fibromyalgia by [Appellant's neurologist], the fibromyalgia symptoms must have evolved in the time between December 2002 and November 2004, well beyond seven months following the motor vehicle accident.
4. As a result of the motor vehicle accident the Appellant suffered soft tissue injuries consistent with whiplash injury.
5. Noted that the first documented diagnosis of fibromyalgia and widespread pain syndrome was made by [Appellant's rheumatologist #1] on November 22, 2004, a period of 2½ years after the motor vehicle accident.
6. Concluded that a motor vehicle accident could not have caused the Appellant's fibromyalgia.

MPIC also submitted that [MPIC's doctor], MPIC's medical consultant, reviewed all the relevant medical reports and conducted a chronological review of the interviews by the Appellant's treating physicians between May 2, 2002 and December 2005 and she reported that:

1. The Appellant's complaints made to [Appellant's doctor #2], [Appellant's doctor #1] and [Appellant's doctor #3] were related primarily to irritable bowel syndrome and not to the Appellant's fibromyalgia.
2. Agreed with [independent physiatrist] that the first documented diagnosis of fibromyalgia was advanced by [Appellant's rheumatologist #1] in November 2004, approximately 2½ years after the motor vehicle accident.

3. Examined the reports of [Appellant's doctor #3], [Appellant's doctor #1] and [Appellant's doctor #2] and noted that none of these reports documented complaints consistent with fibromyalgia prior to [Appellant's rheumatologist #1's] report in November 2004.
4. Also agreed with [independent physiatrist] that the diagnosis by [Appellant's rheumatologist #1] in November 2004 and [Appellant's rheumatologist #2] in 2008 that the Appellant had fibromyalgia did not support [Appellant's doctor #8's] conclusion that there was a causal connection to the motor vehicle accident and fibromyalgia.
5. Determined that the Appellant's primary complaint following the motor vehicle accident was irritable bowel syndrome and that her complaints were not consistent with fibromyalgia symptoms.
6. Agreed with [independent physiatrist] that the Appellant's history of her complaints following the motor vehicle accident were consistent with the medical reports which demonstrated the motor vehicle accident caused the Appellant to suffer from a whiplash injury and not from fibromyalgia.

MPIC submitted that:

1. [MPIC's doctor] and [independent physiatrist] both agreed that [Appellant's doctor #8] erred in relying on the Appellant's history and the reports of her physicians in concluding that the motor vehicle accident caused fibromyalgia.
2. The injuries the Appellant complained of following the motor vehicle accident were soft tissue injuries consistent with a whiplash injury.
3. The Appellant's history of symptoms were primarily related to irritable bowel symptoms and not to fibromyalgia.

4. The reports of the Appellant's physicians, [Appellant's doctor #1], [Appellant's doctor #2], and [Appellant's doctor #3] did not demonstrate medically that the Appellant was suffering from symptoms of fibromyalgia and as a result their reports could not be relied upon by [Appellant's doctor #8].
5. [Appellant's doctor #8] also relied on the reports of [Appellant's rheumatologist #1] who diagnosed fibromyalgia 2 ½ years after the motor vehicle accident and [Appellant's rheumatologist #2] who diagnosed fibromyalgia 6 years later. Neither doctor had commented on the issue of causality.

MPIC therefore submitted that the Commission should reject [Appellant's doctor #8's] opinion on the issue of causality and accept the opinions of [MPIC's doctor] and [independent physiatrist] that the Appellant has not established on a balance of probabilities a causal connection between the Appellant's fibromyalgia and the motor vehicle accident.

Discussion:

The Commission notes that:

1. [MPIC's doctor] agreed with [Appellant's doctor #8] that fibromyalgia is a legitimate diagnosis ([independent physiatrist] disagreed).
2. [Independent physiatrist] agreed with [Appellant's doctor #8] that trauma could trigger fibromyalgia ([MPIC's doctor] disagreed).

Having regard to the Commission's decision, the Commission finds that it is not necessary to determine the dispute between [MPIC's doctor], [independent physiatrist] and [Appellant's doctor #8] on whether fibromyalgia is or is not a legitimate diagnosis or whether or not trauma caused or contributed to the development of fibromyalgia.

Both the Appellant and MPIC agree that the Appellant does suffer from fibromyalgia. However, the issue before the Commission was to determine whether the Appellant's fibromyalgia was caused by the motor vehicle accident.

After a careful review of the reports and testimony of [Appellant's doctor #2], [Appellant's doctor #8], and [independent physiatrist], as well the medical reports of [Appellant's doctor #1], [Appellant's doctor #2], [Appellant's neurologist], [Appellant's chiropractor], [Appellant's doctor #3], [MPIC's doctor], [independent physiatrist], [Appellant's rheumatologist #1] and [Appellant's rheumatologist #2], the Commission finds that the Appellant has failed to establish on a balance of probabilities that there is a causal connection between her condition of fibromyalgia and the motor vehicle accident.

[Appellant's doctor #8's] determination that the Appellant's fibromyalgia was caused by the motor vehicle accident was based on the history he received from the Appellant, the medical reports of [Appellant's doctor #1], [Appellant's doctor #2], [Appellant's neurologist], and [Appellant's doctor #3], together with the reports from [Appellant's rheumatologist #1] and [Appellant's rheumatologist #2]. However, the Commission agrees with the opinions of [independent physiatrist] and [MPIC's doctor] and the testimony of [independent physiatrist], that based on the history of the Appellant's complaints, together with the testimony and reports of [Appellant's doctor #8], that the medical reports of [Appellant's doctor #1], [Appellant's doctor #2], [Appellant's doctor #3], [Appellant's rheumatologist #1] and [Appellant's rheumatologist #2] do not demonstrate there was a causal relationship between the Appellant's fibromyalgia condition and the motor vehicle accident.

After meeting with the Appellant and reviewing all of the relevant medical reports, [independent physiatrist] concluded that as a result of the motor vehicle accident the Appellant suffered mild soft tissue injuries consistent with Whiplash-Associated Disorder Type II and did not suffer from injuries consistent with fibromyalgia. In arriving at this conclusion, [independent physiatrist] referred to the following four reports:

1. Ambulance Patient Care Report – complaints of soft tissue injuries.
2. [Appellant’s doctor #1’s] report of July 22, 2002 – diagnosis consistent with Whiplash-Associated Disorder Type II.
3. [Appellant’s chiropractor’s] report of October 8, 2002 – a diagnosis of “whiplash with a 5th lumbar disc herniation”.
4. [Appellant’s neurologist’s] assessment (on December 3, 2002, a period of six months after the motor vehicle accident) reported a normal neurological examination and that the Appellant’s symptoms were unrelated to the motor vehicle accident.

The Commission notes that [Appellant’s doctor #8] agreed with [independent physiatrist] that a diagnosis of fibromyalgia could not be made until a period of at least three months had elapsed, and perhaps longer after the motor vehicle accident.

[Independent physiatrist] determined that:

1. The first six months following the May 2002 motor vehicle accident, the four records he reviewed did not indicate that the Appellant’s symptoms were consistent with fibromyalgia but rather with a soft tissue injury such as a Whiplash-Associated Disorder Type II.

2. The first documented diagnosis of fibromyalgia and widespread pain syndrome were made by [Appellant's rheumatologist #1] on November 22, 2004 (a period of 2½ years after the motor vehicle accident).
3. The absence of a diagnosis of fibromyalgia by [Appellant's neurologist] in December 2002.
4. As a result, the fibromyalgia symptoms must have evolved in the time between December 2002 and November 2004, a period well after the motor vehicle accident.

[Independent physiatrist] stated that:

1. He disagreed with [Appellant's doctor #8's] diagnosis that the Appellant suffered from fibromyalgia from May 2002 to December 2002, a period of 6 months following the motor vehicle accident.
2. [Appellant's doctor #8] could not rely on [Appellant's rheumatologist #1's] opinion of fibromyalgia which was provided approximately 2½ years after the motor vehicle accident, or the opinion of [Appellant's rheumatologist #2] in 2008, which he provided 6 years after the motor vehicle accident.
3. [Appellant's doctor #8's] diagnosis of fibromyalgia could not be based on the Appellant's reported symptoms to [Appellant's doctor #1], [Appellant's doctor #2] and [Appellant's doctor #3] since these doctors had no medical basis for concluding that there was a causal link between the fibromyalgia and the motor vehicle accident for the following reasons:
 - a) [Appellant's doctor #1], in his report of July 22, 2002 initially diagnosed the Appellant's complaints were consistent with a Whiplash-Associated Disorder and not fibromyalgia. [Appellant's doctor #1] subsequently determined that the Appellant's fibromyalgia occurred after the motor vehicle accident and concluded that the Appellant had no symptoms of fibromyalgia prior to the motor vehicle accident.

- b) [Appellant's doctor #2] testified that he treated the Appellant between September 1995 and 2000 and acknowledged in his report of March 13, 2005 that there was no mention in his chart notes during that period of fibromyalgia or fibromyalgia-like symptoms.

The Commission notes that [Appellant's doctor #2] testified that he was referring to a period prior to the motor vehicle accident but did concede that this could be interpreted as the period subsequent to the motor vehicle accident.

[Appellant's doctor #3] states:

1. He first saw the Appellant on November 18, 2003, approximately 18 months following the motor vehicle accident.
2. He detailed the Appellant's clinic visits and noted the diagnosis of fibromyalgia with irritable bowel syndrome.
3. He indicated that in his opinion the Appellant's symptoms were irritable bowel and the diagnosis of fibromyalgia occurred after the May 2002 motor vehicle accident.
4. He assessed the Appellant on November 18, 2003 and January 15, 2004 with a diagnosis of irritable bowel syndrome and documented a chronic neck sprain.
5. He made no diagnosis at that time of fibromyalgia.
6. On September 15, 2004, the Appellant saw him with a complaint of non-specific chronic muscle and joint pain; at that time he referred the Appellant to see [Appellant's rheumatologist #1], a rheumatologist.
7. [Appellant's rheumatologist #1] assessed the Appellant on November 22, 2004 and was the first doctor to document the existence of fibromyalgia. In December 2004 the Appellant attended [Appellant's doctor #3] who diagnosed irritable bowel symptoms.

8. [Appellant's doctor #3] did not make a diagnosis of fibromyalgia until after [Appellant's rheumatologist #1] reported to him about the existence of fibromyalgia.
9. It was only subsequent to [Appellant's rheumatologist #1's] report that [Appellant's doctor #3] indicated on March 3, 2005 that the Appellant's symptoms were irritable bowel and the diagnosis of fibromyalgia occurred after the May 2002 motor vehicle accident.

The Commission therefore finds that [independent physiatrist] was correct in concluding there was no basis for [Appellant's doctor #1], [Appellant's doctor #2] or [Appellant's doctor #3] to determine that there was a causal relationship between the Appellant's fibromyalgia and the motor vehicle accident.

The Commission also finds that [MPIC's doctor] was correct in concluding that the reports of [Appellant's doctor #1], [Appellant's doctor #2], [Appellant's doctor #3], [Appellant's rheumatologist #1] and [Appellant's rheumatologist #2] did not support [Appellant's doctor #8's] opinion that there was a causal relationship between the motor vehicle accident and the Appellant's fibromyalgia.

The Commission notes that [independent physiatrist's] diagnosis that the Appellant suffered a Whiplash Type injury as a result of the motor vehicle accident was corroborated by [MPIC's doctor]. As a result of her chronological review of the interviews by the Appellant's treating physicians between May 2002 and December 2005, [MPIC's doctor] noted that the complaints the Appellant made to [Appellant's doctor #1], [Appellant's doctor #2] and [Appellant's doctor #3] were related primarily to irritable bowel syndrome and not to fibromyalgia.

[MPIC's doctor] further agreed with [independent physiatrist] that the first documented diagnosis of fibromyalgia was advanced by [Appellant's rheumatologist #1] in November 2004, approximately 2½ years after the motor vehicle accident. [MPIC's doctor] therefore concluded that the reports of [Appellant's doctor #3], [Appellant's doctor #1] and [Appellant's doctor #2] did not document complaints consistent with fibromyalgia prior to [Appellant's rheumatologist #1's] report of November 2004.

[MPIC's doctor] also agreed with [independent physiatrist] that [Appellant's rheumatologist #1's] diagnosis of fibromyalgia in November 2004 (2½ years after the motor vehicle accident) and [Appellant's rheumatologist #2's] diagnosis in 2008 (6 years after the motor vehicle accident) of the Appellant's fibromyalgia does not support [Appellant's doctor #8's] conclusion that there was a causal connection between the motor vehicle accident and fibromyalgia.

The Commission notes that [MPIC's doctor] determined that neither [Appellant's rheumatologist #1] nor [Appellant's rheumatologist #2] commented on the issue of causality and that [Appellant's doctor #8] erred in concluding that the reports of [Appellant's rheumatologist #1] and [Appellant's rheumatologist #2] supported his position on the issue of causality.

The Commission finds that

1. [Appellant's doctor #8] incorrectly relied on the history provided to him by the Appellant and the reports of [Appellant's doctor #2], [Appellant's doctor #1] and [Appellant's doctor #3] when he concluded there was a causal relationship between the motor vehicle accident and fibromyalgia.

2. [Independent physiatrist] correctly concluded that the Appellant was not a reliable historian and one cannot rely on her testimony that her symptoms and complaints were consistent with fibromyalgia as a result of the motor vehicle accident.
3. [MPIC's doctor] agreed with [independent physiatrist] that the Appellant's history of complaints following the motor vehicle accident is inconsistent with the medical reports provided by [Appellant's doctor #2], [Appellant's doctor #1] and [Appellant's doctor #3].

The Commission accepts the opinion of [MPIC's doctor] and [independent physiatrist] that the Appellant's history of complaints following the motor vehicle accident is inconsistent with the medical reports provided by [Appellant's doctor #2], [Appellant's doctor #1] and [Appellant's doctor #3].

In his testimony, [independent physiatrist] indicated that when the Appellant was interviewed she described that as a result of the motor vehicle accident she reported "pain everywhere". However both [independent physiatrist] and [MPIC's doctor] opined that the Appellant's complaints are consistent with a whiplash injury and not consistent with symptoms of fibromyalgia. In her report, [MPIC's doctor] reviewed the Appellant's interviews with her medical practitioners before and after the motor vehicle accident and concluded that her primary complaints of injuries related to an irritable bowel syndrome.

[Independent physiatrist's] report of March 28, 2013 described his physical examination of the Appellant and he stated:

"The current evaluation documents a number of clinical findings that cannot be explained by anatomic or physiologic principles including:

- A history of pain at sites not typically associated with fibromyalgia (teeth, hair)
- A likelihood that the endorsement of pain at such sites implies suggestibility

- Tenderness to palpation at sites not typically linked to fibromyalgia (gently rolling the skin and subcutaneous fat overlying the iliac crests, underlying the ribs and in the axillary folds)
- Inconsistent tenderness to palpation at fibromyalgia tender point loci
- Tenderness with light pressure that is insufficient to blanch the skin
- Widespread and significant “weakness” that would be consistent with profound neuromuscular disease that is situational (present only on manual muscle testing) and not present with functional tasks such as gait, squats, heel (sic)/toe walking, etc.

The above features suggest that the “physical” examination of claimant is not a valid barometer of her of condition. In addition, and without implying an intention to deceive, it does not appear that the claimant is a reliable historian. This is inferred from the discrepancies in her timeline and the likelihood that she is suggestible when presented with questions about the nature of her pain symptoms.

In summary, on a balance of probability and with a reasonable degree of medical certainty, a medically probable cause and effect relationship between the motor vehicle collision of May 27, 2002, and the label “fibromyalgia” has not been established. This conclusion is supported by:

- The medically improbable temporal relationship between the evolution of the claimant’s widespread pain and the motor vehicle collision
- The numerous additional clinical features described above which are neither consistent with criteria established for the label fibromyalgia nor motor vehicle collision-related trauma” (Underlining added)

[Independent physiatrist], in his report and in his testimony, did not suggest the Appellant intended to deceive her medical practitioners but that she erred in her recollection of her complaints of injuries following the motor vehicle accident.

In conclusion the Commission finds that the Appellant’s complaints that she suffered “everywhere” from fibromyalgia after the motor vehicle accident is inconsistent with the reports of [Appellant’s doctor #3], [Appellant’s doctor #1] and [Appellant’s doctor #2] who concluded that the Appellant complained about soft tissue injuries and irritable bowel syndrome after the motor vehicle accident.

Decision:

In conclusion, the Commission finds that in arriving at his opinion that there was a causal relationship between fibromyalgia and the motor vehicle accident, [Appellant's doctor #8] erred when relying:

1. On the faulty recollections of the Appellant's complaints following the motor vehicle accident.
2. The reports of [Appellant's doctor #1], [Appellant's doctor #2], [Appellant's doctor #3] whose reports do not indicate a medical basis for concluding the Appellant's fibromyalgia symptoms following the motor vehicle accident.
3. On the diagnosis made by [Appellant's rheumatologist #1] (2½ years following the motor vehicle accident) and the diagnosis of fibromyalgia by [Appellant's rheumatologist #2] (approximately 6 years following the motor vehicle accident). The reports of these two doctors do not establish that the Appellant suffered from fibromyalgia in the 7 month period following the motor vehicle accident. Neither [Appellant's rheumatologist #2] nor [Appellant's rheumatologist #1] comment on the issue of causality.

For these reasons the Commission gives greater weight to the testimony and medical reports of [independent physiatrist] and the reports of [MPIC's doctor] than it does to the testimony of the Appellant and [Appellant's doctor #2] and [Appellant's doctor #8], as well as the medical reports of [Appellant's doctor #8], [Appellant's doctor #2], [Appellant's doctor #1] and [Appellant's doctor #3]. As a result the Commission concludes that the Appellant has failed to establish on a balance of probabilities that there was a causal relationship between her fibromyalgia and the motor vehicle accident of May 2002 and dismisses the Appellant's appeal.

Dated at Winnipeg this 6th day of July, 2015.

MEL MYERS, Q.C.

TREVOR ANDERSON

JANET FROHLICH