Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-14-020

PANEL:	**Karin Linnebach, Chairperson** **Susan Sookram** **Paul Taillefer**
APPEARANCES:	**The Appellant, [text deleted], was represented by [Appellant's spouse];** **Manitoba Public Insurance Corporation ("MPIC") was represented by Andrew Robertson**
HEARING DATE:	**April 29, April 30, May 1, May 2, May 3 and May 15, 2019**
ISSUES:	**1. Whether the Appellant's benefits were properly terminated for pursuant to s. 160(a) of *The Manitoba Public Insurance Corporation Act* (MPIC Act*)*** **2. Whether MPIC is entitled to repayment of $26,667.95 pursuant to s. 189(1) of the MPIC Act.**
RELEVANT SECTIONS:	**Sections 160(a) and 189(1) of the MPIC Act.**

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

Reasons for Decision

Background

The Appellant, [text deleted], was injured in a motor vehicle accident (MVA) on June 5, 2009.

Following the MVA, the Appellant received Personal Injury Protection Plan (PIPP) benefits,

including Personal Care Assistance (PCA) benefits and Income Replacement Indemnity (IRI) benefits.

On February 21, 2012, the Appellant's case manager issued a decision letter, terminating the Appellant's entitlement to PIPP benefits. The case manager found that, despite the Appellant's ongoing assertions that he had not regained his pre-MVA level of function, an investigation revealed that he had misrepresented the extent of his injuries and abilities and knowingly provided MPIC with false information pursuant to s. 160(a) of the MPIC Act. The case manager found that, contrary to the Appellant's expressed need for round the clock supervision and PCA, an investigation of his activities outside a clinical setting indicated that the Appellant was actually quite independent, functional and active during the course of a day without supervision. The case manager cited video surveillance taken on September 14, 2010, November 23, 2010, December 8, 2010, March 28, 2011, August 30, 2011 and August 31, 2011 as examples. The case manager noted that the Appellant was reimbursed PCA expenses based upon the hours the Appellant submitted at either 16 to 20 hours per day. The case manager found that it is clear from the investigation that the Appellant's claims that he required almost full time supervision were false. The case manager stated:

> *From the investigation it is apparent that while you were attending upon various doctors and advising them of your behavioural abnormalities – abnormalities so significant as to require you to have full time supervision and maximum PCA – you were seen to be out and about on your own with no supervision, appearing fully functional and exhibiting normal behaviour.*

The Appellant's PIPP benefits were terminated under s. 160(a) of the MPIC Act as of February 21, 2012. The case manager also cited the Appellant's obligation under s. 149 of the MPIC Act to advise MPIC of a change in situation that affects or might affect a claimant's right to an indemnity.

Relying on s. 189(1) of the MPIC Act, the case manager found that the Appellant was responsible for reimbursement of PCA benefits that he received from March 28, 2011 to December 31, 2011, totalling $26,667.95. The case manager stated that this amount would be deducted from any permanent impairment award that the Appellant would receive from the physical injury to his right wrist.

The Appellant appealed this decision to the Internal Review Office, who issued a decision dated December 2, 2013 (the Internal Review Decision) upholding the case manager`s decision. The Internal Review Decision stated that the Appellant expressed the requirement of "round the clock supervision" and PCA when in fact an investigation of the Appellant's activities outside a clinical setting indicated he was actually quite independent, functional and active during the course of a day without supervision. The Internal Review Decision relied on a Health Care Services (HCS) review that concluded the Appellant's behaviour and activities shown in MPIC's investigation were not consistent with an individual requiring significant supervision for activities of daily living or who is unable to function independently. The Interview Review Officer found that the Appellant was seen to be "out and about on his own with no supervision, appearing fully functional and exhibiting normal behaviour" and concluded that the Appellant does not have a physical impairment of function arising from the MVA and has provided false and inaccurate information to MPIC.

The Appellant filed a Notice of Appeal to the Commission on January 24, 2014. The issue on appeal is whether the Appellant's PIPP benefits were properly terminated pursuant to s. 160(a) of the MPIC Act and, if so, whether MPIC is entitled to repayment of $26,667.95 pursuant to s. 189(1) of the MPIC Act.

Decision

For the reasons set out below, the panel finds the Appellant has met the onus of establishing, on a balance of probabilities, that his PIPP benefits were improperly terminated and therefore that he is not required to repay $26,667.95 pursuant to s. 189(1) of the Act.

Preliminary and Procedural Matters

Exclusion of Witnesses

[Text deleted], the Appellant's spouse, presented on behalf of the Appellant and questioned the Appellant and his witnesses. Because [Appellant's spouse] was acting on the Appellant's behalf and therefore could not be excluded while the Appellant was testifying, [Appellant's spouse] agreed to testify first. The Appellant decided not to remain in the hearing room during [Appellant's spouse]'s testimony in order to ensure he would not be influenced by [Appellant's spouse]'s testimony before providing his own testimony. The Appellant's witnesses were excluded from the hearing room until they testified.

Additional Documents and MPIC's Adjournment Request

The first day of hearing was scheduled for April 29, 2019. On March 30 and 31, 2019, [Appellant's spouse] submitted additional documents that she wished to rely on at the hearing. Counsel for

MPIC expressed concerns in an email dated April 2, 2019 about these documents being admitted into evidence. [Appellant's spouse] responded to these concerns and counsel for MPIC replied. Counsel for MPIC indicated he may require an adjournment of the hearing in order for HCS to review the new documents, specifically the medication information sheets. By letter dated April 9, 2019, the parties were notified that the Commission requires complete copies of [Appellant's spouse]'s documents, that an index of these documents would be prepared by the Commission and that the documents would be discussed as a preliminary issue at the hearing.

Further documents were submitted by [Appellant's spouse] in April, 2019. The parties were again advised that these documents would also be addressed as a preliminary issue at the hearing.

After lengthy discussion, counsel for MPIC agreed that all documents submitted by [Appellant's spouse] after March 29, 2019 were admitted into evidence subject to weight. However, MPIC took the position that an adjournment should be granted in order for MPIC to obtain an HCS report on the documents submitted addressing medication side effects. Counsel for MPIC also objected to the Appellant seeking a further report on the possible impact of medication side effects.

[Appellant's spouse] explained that when preparing for the hearing she noticed [psychologist]'s comments about possible medication side effects and decided to include the medication information sheets as she wondered if part of the Appellant's behaviour could be attributed to some of the medications. [Appellant's spouse] acknowledged that she had not discussed medication side effects with the Appellant's current treating psychiatrist, [text deleted], and had not obtained a

medical report addressing medication side effects. [Appellant's spouse] opposed any further adjournment as she had taken time off work and had arranged for the witnesses to participate.

The panel denied MPIC's request for an adjournment at that time. The medication information sheets were included by the Appellant as a possible theory only; one that only occurred to [Appellant's spouse] in preparation for the hearing. [Psychologist]'s report dated January 4, 2011 only stated that medication effects may be a component to the Appellant's memory difficulties and noted "possible medication effects" as an explanation for the Appellant's behaviours. There is no indication that this theory was ever explored after that time. It had taken over five years to commence hearing the Appellant's appeal. The panel was not prepared to delay the hearing any further. While MPIC's request for an adjournment was denied at that time, the panel indicated that MPIC could renew its request for an adjournment should counsel require more time to prepare for cross examination or need to call rebuttal evidence as result of evidence on this issue. No such request was made during the hearing.

Evidence

The Commission heard oral evidence from [Appellant's spouse], the Appellant, [text deleted] ([family friend #1]), [text deleted] ([family friend #2]), [Appellant's daughter]) and [text deleted] [Appellant's son-in-law].

[Appellant's spouse]

At the time of the MVA, [Appellant's spouse] and the Appellant had been married for 21 years. The Appellant was an active parent. He volunteered, coaching basketball, and was involved with their church. He enjoyed the outdoors and travelling. He loved to garden and cook.

At the time of the MVA, the Appellant was employed as a lab technician and [Appellant's spouse] was working as a case manager for MPIC. They had been having difficulties in their marriage at that time and had been separated for a few weeks. However, [Appellant's spouse] continued to cook meals and do laundry during their separation.

After the MVA, the Appellant was treated for his physical injuries at the hospital and then sent home. He was behaving oddly so [Appellant's spouse] took him back to the hospital. He was referred to the traumatic brain injury (TBI) unit at [health centre]. The Appellant stayed at [health centre] for 5 weeks undergoing intensive rehabilitation. [Appellant's spouse] stayed with him every night, sleeping at the hospital.

While at [health centre], the Appellant was experiencing a significant amount of pain in his hand and arm. The Appellant was referred back to the hospital for further x-rays. On July 4, 2009 the first surgery on his hand was performed. After surgery, he returned to [health centre].

When the Appellant was at [health centre], he displayed angry outbursts and was suicidal. While on "suicide watch", the Appellant was referred to a psychologist, [text deleted]. The Appellant had no psychiatric issues prior to the MVA.

The Appellant was discharged from [health centre] on July 21, 2009 and diagnosed with a TBI. When he was home, there was lots he couldn't do because his injured hand was his dominant hand.

When the Appellant was discharged from [health centre], MPIC funded Personal Care Assistance for the Appellant, including daily supervision. This care was first provided by [text deleted]. One day, the Appellant phoned [Appellant's spouse] at work and said he had locked himself in the bathroom because he was scared of the worker from [text deleted]. The Appellant told [Appellant's spouse] that the worker was saying frightening things about killing people in [country]. [Appellant's spouse] subsequently discovered that the worker was also a client of MPIC and under the caseload of the same case manager that was assigned to the Appellant. [Appellant's spouse] discussed this with MPIC and the family. Ultimately, it was decided that the Appellant's daughter would provide care for the Appellant. Because [Appellant's spouse] was working for MPIC at the time of the MVA, she felt it wasn't appropriate for her to be advocating for her husband so asked their daughter to also take the lead on dealing with MPIC.

[Appellant's spouse] was a close colleague of one of the Appellant's case managers, [text deleted]. [Appellant's spouse] also considered [Appellant's case manager] a friend. They had coffee together and spent every lunch hour together. They communicated outside of work. She found it hard to speak to [Appellant's case manager] about the Appellant's difficulties and believed it was hard for him to respond. For that reason, MPIC hired an external case manager, [text deleted] in mid September 2009. [Appellant's spouse] described [Appellant's case manager #2] as useful and helpful. [Appellant's spouse] stated that her relationship with [Appellant's case manager] deteriorated over time.

At the time of the MVA, the Appellant did not have a regular family physician because his previous physician had died. This made it difficult to have a consistent person looking after his care. The Appellant would attend a walk in clinic. At one point, the Appellant was prescribed an antidepressant to which he subsequently discovered he was allergic. This resulted in him going to hospital. The Appellant was finally able to find a family physician, [Appellant's family physician], in January of 2010.

[Appellant's spouse] described the Appellant's erratic behaviour and how the Appellant's behaviour had changed after the MVA. She stated that the things he was doing were "not normal". One night, he disappeared, went to an abandoned freezer, crawled in it, and closed the lid. Another time he disappeared from their cabin area and a neighbour and [Appellant's spouse] found him on a bridge sleeping. Another time, [Appellant's spouse] found him in their van in the garage with the van's engine running. The Appellant has taken the vehicle on occasions, even though his licence was suspended. If he wants to do something, he won't wait for someone to go with him, but will just take the vehicle and leave. Once he even stole his son-in-law's truck while intoxicated. He was arrested and charged with impaired driving. They also found him trying to hang himself at their home.

The Appellant has made poor decisions since the MVA. Once there was a leak in the bathroom. To repair the leak, the Appellant took down all the walls and removed the vanity, toilet and shower. On another occasion [Appellant's spouse] asked the Appellant to pull out a tree that was growing

out of the window well. When he tried to pull it out it broke off and the Appellant wasn't able to get the root. The Appellant then decided to get gasoline to try to burn it out. Had someone not been with him at the time, he would have started a fire.

The Appellant began purchasing things and [Appellant's spouse] had to take over managing his money. He bought wood stoves and tried to put their house up for sale. He would spend any money he got.

[Appellant's spouse] stated that a lot of their friends withdrew from their company because of the Appellant's rude behaviour. The Appellant would say exactly what he was thinking and would blurt out his thoughts. [Appellant's spouse] didn't know what was happening to him. They were looking for answers as to what was going on with the Appellant. She didn't know why he was behaving the way he was. [Appellant's spouse] was trying to rebuild her relationship with him, but she became the caregiver.

[Appellant's spouse] stated that over time the Appellant grew tired of people caring for him. He didn't want to be supervised by anyone. He wanted to be left alone and, at times, he wanted to die. He didn't want to be a burden for [Appellant's spouse] and their daughter. The Appellant's relationship with their son was also strained after the MVA.

[Appellant's spouse] stated that they understood that the family was free to hire whoever they chose to provide PCA to the Appellant. MPIC provided a certain amount of funding for personal care related to the hand injury and the rest for supervision. The family would pay the individual

who supervised and then wait for reimbursement from MPIC. MPIC reimbursed a certain amount for supervision per day. The cost of hiring a caregiver from a private company was much more than minimum wage. If they hired family or a friend, they could pay minimum wage and stretch out the amount of time money would buy.

[Appellant's spouse] stated that it was important for the Appellant to be supervised at night because he was often up at night and she needed sleep to be able to go to work. She wasn't able to get up and control what he was doing when she needed to sleep. Her daughter and son had flexibility to be able to watch him at night.

The Appellant didn't want strangers coming into the house to supervise, but he was hard to handle. Eventually they hired a family friend, [family friend #1], to supervise the Appellant, but the Appellant was abusive and mean to him. [Family friend #1] quit several times and it was hard to find someone else to supervise the Appellant. Their son-in-law, [text deleted], also helped out.

[Appellant's spouse] stated that MPIC never defined what supervision is and what the expectations were. They didn't know if that meant the caregiver was supposed to be next to the Appellant 100% of the time. [Appellant's spouse] stated that MPIC left it to the family to figure that out. MPIC also left it up to the family to determine when the supervision should be reduced. [Appellant's spouse] stated that MPIC should have provided less supervision if they felt less was needed. MPIC never asked what times of day the Appellant was being supervised. They filled out the forms "in the standard way" merely noting the total number of hours that were approved.

[Appellant's spouse] explained that they interpreted supervision to mean not leaving the Appellant 100% alone and intervening if he was making poor decisions or acting erratic and impulsive. They did their best to calm the Appellant and stay rational. They listened to what he had to say and allowed him to vent. If she thought the Appellant was completely out of control, she called 911 or the mobile crisis unit.

[Appellant's spouse] stated that she and [Appellant's daughter] both went for counselling after the MVA. The Appellant didn't want to be supervised or "being watched". He didn't want a "supervisor" around him. He also didn't want people to know he was being looked after. They communicated this to [psychologist #2] who told them that if the Appellant was resistant to having supervision, they should supervise from a distance. They were told not to make the Appellant feel that they are watching him.

MPIC only compensated $190 per day for supervision, which meant that the family could only purchase 15.91 days of supervision per month if paying minimum wage. If they hired someone from an agency, they would have had to pay more than minimum wage and the coverage would have been even less. The funds provided by MPIC to purchase supervision did not cover the amount of supervision for which the Appellant was approved. [Appellant's spouse] stated that because there was no specific requirements as to how supervision was done, they followed what [psychologist #2] told them and supervised from a distance in order to give the Appellant some independence. [Appellant's spouse] stated that there was some improvement in the Appellant's behaviour from the time of the MVA to 2011. It was sufficient improvement for her to approach [psychologist #2] to reduce the amount of supervision.

[Appellant's spouse] spoke with [Appellant's case manager #2] about getting an independent medical examination to determine whether the Appellant had a brain injury or psychiatric issues. [Appellant's case manager #2] suggested that the Appellant see [psychiatrist #2], which the Appellant did on February 18, 2010.

In March 2010, the Appellant had an incident in which he had a butcher knife under his bed. [Appellant's spouse] reported this incident to both [Appellant's case manager] and [text deleted]. However, no action was taken on that. On May 14, [Appellant's case manager #2] called [Appellant's spouse] to advise that she had arranged for [psychiatrist #2] to see him again. [Appellant's spouse] understood that some adjustments could be made to the Appellant's medications and he should again see [psychiatrist #2] for those adjustments to be made.

When the Appellant went to see [psychiatrist #2], he asked the Appellant about the knife incident in March. [Appellant's spouse] and the Appellant explained what had happened. [Psychiatrist #2] indicated that it was best if the Appellant was treated in an inpatient facility. [Psychiatrist #2] wanted the Appellant to be in the hospital. That is when the Appellant "ran away". [Appellant's spouse] continued to talk to [psychiatrist #2] about what was happening. [Psychiatrist #2] issued a "form 4", which is an application for an involuntary psychiatric assessment. The police would be contacted for the Appellant to be brought in.

[Appellant's spouse] didn't hear from the Appellant after he left [psychiatrist #2]'s office. He didn't call her so she began looking for him. [Appellant's spouse] thought maybe he had gone to

his family in [city #1]. Around the mid-week, [Appellant's spouse] went to the cabin and the Appellant showed up there. [Appellant's spouse] then spent time talking to the Appellant. He was calm; he had been taking his medications. [Appellant's spouse] felt he was doing better. The Appellant wanted to live at the cabin, but [Appellant's spouse] wanted him to return to the city and go back and see [psychiatrist #2]. She had spoken to [psychiatrist #2] and had told him that she hadn't seen the Appellant. She was finally able to convince the Appellant to return home on the Friday. Fifteen to twenty minutes after they returned home, the police came to arrest the Appellant and took him to hospital.

[Appellant's spouse] stated that she learned the police had been to their home 20 times that week looking for the Appellant. When the police finally found him on the Friday, it was a huge ordeal. The Appellant was fighting the police. [Appellant's spouse] begged the Appellant to go to the hospital to get checked out. Ultimately the police took the Appellant out in handcuffs wearing only underwear. [Family friend #2] was in the house when it happened.

The police took the Appellant to hospital emergency. [Family friend #2] and [Appellant's spouse] followed in their own car with clothes for the Appellant. When [family friend #2] and [Appellant's spouse] arrived, the Appellant was locked in an interview room. [Appellant's spouse] was allowed to go into the room and get him dressed. The Appellant did not want to be hospitalized. He wanted a chance for the medications he was taking to work and to be with family. [Appellant's spouse] supported the Appellant. She felt she wasn't there for the Appellant during the accident and that she needed to support him. As a result, when the doctors came to speak to her about his functioning, [Appellant's spouse] told them she had spent time with the Appellant at the cabin that week.

[Appellant's spouse] acknowledged that she was not "100% honest", but asserted this was the only time she has stated anything false. [Appellant's spouse] told the doctors he was gardening and doing better and that he wasn't suicidal so the doctors released him and they went home. She didn't want the Appellant to be hospitalized because he didn't want to be. She was trying to rebuild her marriage and decided to support the Appellant so he wouldn't be hospitalized. [Appellant's spouse] acknowledged that she was untruthful when describing what happened during that week not only at the time but in later reports to MPIC.

It was pointed out to [Appellant's spouse] that both [psychologist #2] and [psychiatrist #2] felt the Appellant needed to be hospitalized as a result of his actions, including an incident where the Appellant wanted to kill [Appellant's spouse]. [Appellant's spouse] was asked why she preferred to follow the Appellant's wishes rather than the recommendations of medical professionals. [Appellant's spouse] stated that she was trying to rebuild trust with the Appellant and trying to support him in what he wanted. While she acknowledged the incidents that were documented, she stated that she was able to diffuse those situations.

Neither [Appellant's spouse] nor the Appellant saw [psychiatrist #2] again. On May 26, [psychiatrist #2] received the report from hospital emergency. As a result of this report, [psychiatrist #2] changed his opinion about the Appellant based on the Appellant running away and [Appellant's spouse] and the Appellant telling the hospital that the Appellant was doing better. [Appellant's spouse] stated that both [Appellant's case manager] and [Appellant's case manager #2] wanted the Appellant to see [psychiatrist #2], but he wrote that his opinion was skewed.

[Appellant's spouse] referred to a report from [psychiatrist #2] dated May 26, 2010 that states [psychiatrist #2] would not provide the Appellant with any further appointments.

[Appellant's spouse] believed that both [psychologist #2] and [psychologist] changed their opinions of the Appellant and his condition. She believes that a "domino effect" began to happen. [Appellant's spouse] stated that after [psychologist] changed his opinion, the Appellant went to [Appellant's family physician] and asked for a referral to their own psychiatrist. The Appellant was referred to [Appellant's psychiatrist], who provided a diagnosis and put him on medication. [Appellant's spouse] stated they then began to see improvement around December 2011 as a result of the medication changes. The Appellant started to "calm down quite a bit" into 2012.

In his May 26, 2010 report, [psychiatrist #2] stated that the Appellant may benefit from a neurology consult so the Appellant was referred to [text deleted], a neurologist. [Appellant's spouse] referred to [neurologist]'s report dated March 12, 2012, which states that the Appellant's variety of symptoms are compatible with posttraumatic syndrome following a head injury and that it was not unusual for these symptoms to have persisted this long post-injury.

[Appellant's spouse] stated that, after the MVA, she pushed the Appellant to do things that were "normal", such as taking out the garbage, involving him with the kids, going to church on Sundays, and maintenance around the house to the best of his abilities.

[Appellant's spouse] reiterated that the Appellant is not the same as he used to be. As she reported to both [Appellant's case manager] and [Appellant's case manager #2], there have been good days

and bad days. Not every day has been a bad day. The Appellant has suffered a lot of losses as a result of the MVA: his employment, driver's licence; relationship with his son, friends, and ability to play cricket, volunteer, cook independently, and take care of their home. The Appellant's relationship with [Appellant's spouse] has also changed.

[Appellant's spouse] reiterated that, before the MVA, the Appellant was very meticulous with taking care of the home. After the MVA, [Appellant's spouse] encouraged the Appellant to do things around the house like he used to. She encouraged him to do "things that were normal". However, [Appellant's spouse] feels that because of her encouragement, the Appellant was caught on video doing things that makes him look independent.

The reality is that [Appellant's spouse] manages most of the things in his life. She orders and picks up his medication. She does all the finances and meals. She keeps track of their schedule and his appointments. She encourages him to bathe and change clothes. She makes sure that he eats as the Appellant has lost a significant amount of weight after the MVA. [Appellant's spouse] has become the Appellant's caregiver.

[Appellant's spouse] described the Appellants current day-to-day activities. The Appellant stays up very late at night, watching news. He sleeps on the couch. During the day he does Sudoku and the crossword. If the weather is good, he will do such activities outside. He will sit on the deck for hours. He always wants to go to the cabin so on Fridays when [Appellant's spouse] gets home from work, he is packed and ready to go for the weekend.

The Appellant still has chronic pain in his hand. He has limited range of motion. Nonetheless, the Appellant "finds a way to do things" and is in pain afterwards.

From January to March yearly, the Appellant returns to [country #2] to be with family. Last year the Appellant took the entire spending money [Appellant's spouse] had given to him and spent it in 3 weeks. As a result, [Appellant's spouse] had to bring him back early. This year [Appellant's spouse] gave him less money when he left then forwarded more money.

Having the Appellant go to [country #2] to stay with family is a break for [Appellant's spouse]. She has continued to work full time since the Appellant's MVA and has advanced in her career. She finds it difficult to "manage" the Appellant. Their daughter has continued to be a great help and sometimes can take the Appellant for weekends.

[Appellant's spouse] stated there have been changes in the Appellant since his granddaughter was born in 2014. He no longer talks about killing himself as he has grandchildren to live for. He enjoys being with them. Before the grandchildren he didn't have a purpose. He had no job, people with him all the time and he couldn't take care of himself. Now he has a purpose for living.

After the Appellant's benefits were terminated, the Appellant did not want to apply for CPP disability, but eventually did. CPP paid benefits back to the date of application which was in 2015. [Appellant's spouse] stated that this was a real marker for her that the Appellant was a really sick man as it is difficult to get CPP disability.

As a result of his benefits being terminated, the Appellant stopped seeing [psychologist #2]. The Appellant no longer had any income so could not pay to see [psychologist #2]. Some of the Appellant's medications were covered through [Appellant's spouse]'s plan, but they still had to pay out of pocket.

[Appellant's spouse] was asked about the Appellant's symptoms and behaviours over time. She explained that the Appellant would have good days and bad days and that his bad days were approximately once or twice a week in 2009 and 2010. The Appellant was resistant to taking his medication and took it inconsistently. His noncompliance with taking his medication impacted whether he had bad days. [Appellant's spouse] stated that she saw some gains in him between 2009 and 2011 which were significant enough for her to discuss the reduction of supervision with [psychologist #2].

The Appellant

The Appellant stated that he had no problems with his health prior to the MVA. He was active and didn't take any medications except for Zantac. He had never had an operation. He felt he was strong mentally. He had patience. He took his time with decision-making. He was able to settle disputes at work or elsewhere. He stated he was "generally a normal person". He was rational.

Prior to the MVA, he was involved in lots of activities. He was assistant coach on his son's basketball team, coached cricket, and taught Sunday school. He was involved with the [text deleted] and assisted with activities of the society such as fundraising and social events. He played dominoes with his friends.

He had been regularly employed prior to the MVA. In 1999, they moved from [city #1] for his new job with a pharmaceutical company. He was initially hired as a lab technician but after 6 months received a significant raise and a promotion to chemist. Even though he was very successful at this position, the Appellant decided to quit in 2004. He had been commuting to [city #2] and working the night shift and felt he needed to be more available for his family. He accepted a good position with a biotech company in [city #3], but was laid off in 2006 or 2007 when the company was sold. He was given the opportunity to relocate to [country #3], but he declined.

After he was laid off, he worked for a neighbour who is a carpenter. They built decks and fences and did home renovations. After working for his neighbour for a while, he was hired by a company that makes insecticides and pesticides as a lab technician, which is where he was working at the time of the MVA.

While the position he held at the time of the MVA was not the same kind of position he had held previously, he took the job hoping that he would eventually find a better one. A week or so prior to the MVA, he hurt his back at work. It was not a significant injury but he wanted to be cautious. He did not tell WCB that he had had an MVA. In any event, he was not able to return to work after the MVA due to his MVA related injuries.

The Appellant was asked why he didn't report having an MVA to WCB. He thought he may have been fumbled or flustered when he spoke to WCB. He also thought that perhaps he didn't mention it to WCB because he knew he was not returning to work due to the MVA. He explained that the

lab was closed for the summer and he was just helping in the warehouse for a short time. He agreed with WCB that he wouldn't get wage loss benefits so there was no need to tell WCB about the MVA.

The Appellant described the MVA. He remembers it being dusk and seeing a cow, but not getting a chance to brake before hitting it. His van spun around and went into the ditch. When he woke up, he was pinned and squished with a broken right hand. His head was against the windshield with the tail end of the cow on his face. The water in the ditch was cold. He doesn't remember how long he was in the ditch.

The Appellant didn't know where to go. It was night by that time. He was disoriented and tried stopping vehicles on the road. One driver said his wife didn't want him to go with them because he might die and they'd be in trouble. Another driver asked him if he was trying to kill himself by standing on the road. The Appellant asked this driver to take him to the hospital. The driver said he was impaired and wouldn't take the chance to drive the Appellant to the hospital but said he would take the Appellant to his cabin in [text deleted]. The Appellant said the driver got fed up with him because the Appellant wasn't able to give clear directions. The driver saw someone by a campfire and dropped the Appellant off there.

The Appellant believes he was in and out of his senses. He believes someone else tried to help him, but he ran away from them. The Appellant ran into the bushes. He remembers knocking on somebody's window. He eventually found his cabin, but he doesn't know how he found it. He reached his cabin from the back and saw people looking for him. He remembers being scared "or

like a vicious animal or something". The neighbours helped clean him up and called an ambulance. Someone there was a paramedic who provided assistance.

The Appellant went by ambulance to [town]. That is when he first saw how damaged his face was. He was badly cut and there were shards of glass in his face. He can't describe how that felt, but he remembers wondering if he was going to get better. Prior to the MVA, he took pride in his appearance.

The Appellant was sent by ambulance from the [hospital] to the [hospital #2] in [city #3]. He remembers resting and feeling "kind of dazed out". He believes someone at the [hospital] said something about him having a brain injury. He said that after they x-rayed his hand at [hospital #2] they told him there was nothing wrong with it.

On cross-examination, the Appellant acknowledged that the chart notes document that the Appellant was oriented and alert when in ambulance going to [town]. The Appellant acknowledged that the ambulance report stated that the Appellant did not lose consciousness after hitting the cow. The Appellant maintained he was "in and out of his senses" and was not thinking rationally. The Appellant explained his inconsistencies in reporting what happened in the MVA on difficulty remembering at the time and trouble focussing. The Appellant asserted that, despite any earlier reports, he was unconscious at the time of the MVA and woke up disoriented. The Appellant stated that the MVA occurred approximately 50 kilometers away from his cabin, which is where the ambulance picked him up. In addition, the ambulance came approximately 2 hours after the MVA.

The Appellant asserted that while the ambulance report states that the accident occurred at 11:30 pm that was when he woke up and not when the MVA occurred. The MVA occurred at dusk.

When the Appellant was discharged from the hospital a day later, he left the hospital in pain. His head hurt and he knew there was something wrong with his hand even though he was not provided any information that he had a severe hand injury. When he looked down he was dizzy. He doesn't know if he was exhibiting any odd behaviour, but a few weeks after he was discharged from [hospital #2] he went to [health centre]. He stated he was shocked when they told him he was going to "a brain place". He doesn't know how it came about that he had to go to [health centre].

When he went to [health centre], he was treated with painkillers. He remembers going for therapy on his hand. He was shown how to use kitchen utensils to feed himself. He remembers going for walks. He remembers telling the staff that he felt dizzy if he looked down. He believes he tried to escape a few times because "it was too guarded and too militant". He felt everything had to be done at their command and they locked the doors on him and followed him when he went out to smoke.

He remembers having excruciating pain in his hand and him telling the doctors at [health centre] that there was something wrong with his hand. He was sent back to the hospital for more x-rays and discovered that there was in fact something wrong. He was told he should have had it fixed on the day of the MVA. He was then scheduled for surgery.

He doesn't know if it was the painkillers, but feels he wasn't in his "right senses" almost all of the time. He remembers getting lost when he went outside the hospital. He wasn't thinking straight. He remembers a janitor helping him find his way back on one occasion.

After the surgery, he was transferred back to [health centre]. His hand was in a cast at first so any rehabilitation was for his mental difficulties. He did exercises with blocks and pegs that he described as "crazy stuff". He said the exercises were confusing and there would be someone hovering around him. He felt a child would have done the exercises faster than him.

He remembers feeling bitter, angry, and rebellious as well as embarrassed that he couldn't perform simple tasks. He stated that it haunts him still today that simple little things can be difficult for him. He remembers having extreme mood changes. He stated he would be nice and then not nice. He remembers taking his food to his bedroom and eating there rather than in the room with everyone. He believes he was "kind of obnoxious and crazy".

He remembers having a "scuffle" with one of the employees at [health centre]. He remembers "casing out the whole place" to find a window to jump out of. He wanted "to just finish everything". He hated when his children came to see him. He didn't want to put any of his family through the heartache of having to take care of him. He stated that going home to be dependent was a reality that he didn't want to face. He did not remember what happened after he tried to jump out of the window at [health centre] other than someone sat outside his room.

The Appellant stated that he never tried to end his life prior to the MVA. He stated that his life prior to the MVA was “full of joy”. He stated he had everything to live for. He kids were almost grown and life was becoming “easier and sweeter”.

He acknowledged that he was having some difficulties in his marriage at the time of the MVA, but stated that he and [Appellant’s spouse] just needed to each have their own space for a time to think about where they were going. He stated that his attempting suicide was not related to his relationship with his wife. They had been married over 20 years and they both needed space to work on their issues. His wife continued to come to their home, cook and do laundry during their separation. While at [health centre], his wife visited him and was back living in their home when he was discharged from [health centre].

He stated that he remembers having mixed feelings about being discharged from [health centre]. He remembers feeling caged up at [health centre] and wanting freedom, but being worried about getting care at home. The Appellant does not remember how PCA was arranged and who would be paying for it.

Prior to the MVA, the Appellant managed his own finances, but after the MVA he wasn’t able to. [Appellant’s spouse] “took away those privileges” because he was watching TV at night and buying things. He also booked a trip to [text deleted] and a cruise from [text deleted].

The Appellant remembers that a fellow from an agency, [text deleted], was hired to look after him after he was discharged from [health centre]. He stated the first day with this fellow was okay but

on the second day the caregiver started to talk about how he had killed people in [country] and about using machetes. The Appellant said he seemed like a dangerous fellow. The Appellant didn't trust him so hid some of their kitchen knives. One day the Appellant went into the bathroom and called [Appellant's spouse] at work to tell her the caregiver was scaring him. The Appellant felt the caregiver looked "like a maniac". The Appellant decided to stay outside with the caregiver because he thought he could run away if he was outside.

The Appellant discovered that this caregiver was also a client of MPIC with the same case manager. The Appellant was very disappointed by this and wondered why MPIC would send "a crazy man" to supervise him. He felt that MPIC was not looking after his best interests.

After that, MPIC gave him the option of hiring family and they decided their daughter would take a year off university to be with the Appellant. He doesn't know why they didn't consider hiring a caregiver from a different agency.

The Appellant stated that he felt safe with his daughter caring for him, but felt guilty that she was missing a year of school. He also felt "belittled" because he was the parent and his daughter was now acting like the parent. She made sure he had food and took his medication. Before the MVA, he had no problems eating, but after the MVA he hated food.

The Appellant didn't want to take his medications. He didn't believe they were doing him any good. He was still having nightmares and the medications made him feel unmotivated. After a while he started to trick his daughter and pretend to take the medications. He would put the pills

in his pocket. It wasn't until he started seeing [Appellant's family physician] when he began to get help with his medications.

The Appellant doesn't know who in his family was communicating with MPIC about his claim. He remembers spending time with a speech pathologist and doing exercises with her. He remembers seeing [psychologist #2] and that [Appellant's case manager #2] was hired by MPIC to case manage his claim. He felt that his relationship was good with [Appellant's case manager #2] until he went to see [psychiatrist #2].

The first time he went to see [psychiatrist #2], he went to the appointment by himself. He remembers [psychiatrist #2] asking him questions. The Appellant felt that [psychiatrist #2] understood what he was experiencing and the Appellant accepted his diagnosis.

The Appellant went to see [psychiatrist #2] a second time because [Appellant's case manager #2] told him that [psychiatrist #2] wanted to review his medications with him. He stated that [Appellant's case manager #2] made the appointment for him and told him to take his medications to the appointment. [Appellant's spouse] came to the second appointment with him.

The Appellant stated that when he got to the second appointment he took his medications out and put them on the table for [psychiatrist #2]. He stated he was shocked when [psychiatrist #2] didn't look at the medications, but rather said he was going to "lock up" the Appellant. When the Appellant learned what [psychiatrist #2] wanted to do, he got up and left [psychiatrist #2]'s office.

The Appellant described an incident that occurred prior to his second appointment with [psychiatrist #2]. He had a knife under his pillow and wanted to kill himself and his wife. He stated that, at that time, he felt like a burden. He was helpless, dependent and could no longer make decisions for himself. Before the MVA, he was "the man", but had now "become small". He used to bowl, shoot hoops, and play dominoes. After the MVA, he couldn't do anything. His son started to drift away from him. The Appellant was hurting and he was hurting his family. He stated that all the things he used to like to do were taken away from him due to his mental and physical health. He could no longer travel. His life was a dead end. None of the medical practitioners he had seen had given him any hope or encouragement. He was told he would have permanent problems with his hand.

When [Appellant's case manager #2] contacted him about going to see [psychiatrist #2] a second time, he felt that someone was looking at his situation. He was optimistic [psychiatrist #2] would review his medications and give him more suitable ones. When he saw [psychiatrist #2] at the second appointment, he didn't feel that [psychiatrist #2] gave him a reason for needing to be hospitalized. The Appellant initially stated that [psychiatrist #2] asked him about "the knife story" and what the Appellant thought [psychiatrist #2] should do. The Appellant later stated that he didn't discuss the knife incident with [psychiatrist #2]. The Appellant asserted that [psychiatrist #2] didn't ask him about his medications or his current functioning. [Psychiatrist #2] just brought up the need for the Appellant to be "locked up" and the Appellant became infuriated. The Appellant was adamant that [psychiatrist #2] had decided that the Appellant should be hospitalized before the Appellant attended the second appointment. The Appellant denied knowing that [psychologist #2] also supported the Appellant being hospitalized at that time.

The Appellant explained that he didn't want to be hospitalized because he thought he would be "locked up with crazy people". He was afraid of going to the hospital. He thought he would be in a straightjacket. He acknowledged he never discussed with [psychiatrist #2] what would happen if he was hospitalized.

After he left [psychiatrist #2]'s office, he went to a garden centre. He then called a friend to see if he would take him to the [country #3] His friend wouldn't take him to the [country #3], but suggested they go to [city #4]. His friend's uncle was a psychologist in [city #4], who his friend thought might be able to help. The Appellant agreed to go to [city #4] and meet with his friend's uncle.

The Appellant appreciated speaking with his friend's uncle, which he felt helped him a lot. Speaking with the uncle gave him hope that things will get better. The Appellant stated that it was by accident that he went to see the uncle, but it was the best therapy for him. The uncle was hopeful and calm and convinced him his mental health would improve over time. The Appellant acknowledged that he never discussed what would happen if he was hospitalized.

The uncle suggested that the Appellant return to the city and talk to [psychiatrist #2]. However, rather than go back to the city, the Appellant decided to go to his cabin because he had spoken with his daughter a few times and she told him that the police were looking for him. The Appellant acknowledged that he decided to go to the cabin to avoid the warrant and wait until it expired after 7 days.

[Appellant's spouse] was at the cabin when the Appellant got there. The Appellant remembers discussing with [Appellant's spouse] whether he should return to the city and go see [psychiatrist #2]. The Appellant stated he was feeling better after speaking with his friend's uncle and felt there was no need to return to speak to [psychiatrist #2].

The Appellant and [Appellant's spouse] returned home from the cabin on the Friday that week. While they were watching TV at home, the police came to get the Appellant to take him to the hospital. The Appellant refused to go. There was a "scuffle" and the police "took him down" while he was wearing only his underwear. The police took him to the hospital where he was restrained in a locked room.

[Appellant's spouse] arrived at the hospital and brought the Appellant some clothes. A psychiatrist spoke to the Appellant, who stated that he was feeling fine and was not suicidal. The Appellant did not remember in any detail what he told the psychiatrist. After being shown the psychiatrist's notes, the Appellant acknowledged that he told the psychiatrist that he took a cab to see his son and then went to the cabin with [Appellant's spouse].

The Appellant remembers telling [Appellant's case manager] about what happened after he saw [psychiatrist #2] the second time. He told [Appellant's case manager] that he was with his son-in-law, [text deleted], rather than with his friend. His friend's uncle asked him not to disclose that he saw him. The uncle did not give him a reason, but the Appellant assumed it is because [psychiatrist

#2] is the uncle's peer. The Appellant doesn't believe he ever disclosed the uncle's name to [Appellant's case manager].

The Appellant acknowledged that he told a different story to the hospital than the story he told to the case manager and that both versions are different from his testimony. He admitted he made false statements to the hospital and [Appellant's case manager]. He admitted that when he was at the cabin with [Appellant's spouse], he told her he didn't want to return to the city because he didn't want to be hospitalized. The Appellant felt strongly that the health care professionals wanted him "locked up" in hospital. He thought if he was honest to the hospital psychiatrist about what had happened, he would have been locked up. He believes he promised [Appellant's spouse] that he "would be good". The Appellant stated that he was prepared to go back and see [psychiatrist #2], but just didn't want to be hospitalized. The Appellant believes that it was [psychiatrist #2] who did not want to see the Appellant again.

The Appellant acknowledged that he told his speech pathologist that he felt he may be a danger to people and that he wished to be "locked up". He stated that is probably what he wanted at one point. He then stated that it "was a spur of the moment thought". The Appellant stated that when he told this to the speech pathologist he was thinking of [health centre] and not a "mental institution or madhouse or anything".

After the second appointment with [psychiatrist #2], the Appellant lost all trust in [Appellant's case manager #2]. He stated that he was in a delicate state of mind and felt betrayed by [Appellant's case manager #2] for suggesting he attend to [psychiatrist #2] a second time.

The Appellant feels that [psychiatrist #2]'s second report did not accurately reflect his medical condition because he had only spoken to [psychiatrist #2] for a few minutes on the second appointment and did not speak to him again. He believes that [psychiatrist #2]'s second report affected the way other health care providers viewed him. He feels some of the subsequent reports are "skewed" by [psychiatrist #2]'s comments in his second report.

The Appellant went to see [psychologist] and after his initial appointment, [psychologist] agreed that the Appellant may have suffered a concussion in the MVA. [Psychologist] did not conduct any neurological testing.

The Appellant was asked how he felt about being supervised and what he understood supervision was for. The Appellant was never sent any communication from MPIC which described what supervision is. He was never told that being supervised meant he needed a caregiver right next to him. He agreed that MPIC left it to his caregivers' and family's discretion as to how he would be supervised. He felt he couldn't have a supervisor watching him all the time. Sometimes he would get into arguments with his caregivers. He would tell them to stand away.

The Appellant acknowledged that after the MVA he began drinking more alcohol. He stated that he was a social drinker before the MVA but this increased. He stated that "a lot of things" were causing him to drink more, including his chronic pain in his hand. He would use alcohol to get away from the pain.

The Appellant acknowledged that he was given painkillers to help him with his pain, including morphine and Percocet. He stated that he didn't like taking these medications because he was worried about getting addicted to them. He would therefore only take them when in severe pain. He hasn't used many of them.

The Appellant was asked about incidents where he displayed "bizarre" behaviour. He recalled sleeping on a bridge at the lake and hoping a tractor trailer would run him over. [Appellant's spouse] and neighbours at the lake found him. He recalled trying to commit suicide in his shed. [Appellant's son-in-law] found him in a chair tying a cord to the roof. He recalled sleeping in the snow in their backyard and an ambulance came to take him to hospital. On another occasion he slept in a snow bank. He recalled directing traffic for snowplows to plow the roads. He recalled hitting a pedestrian because the pedestrian was blocking his vehicle. The pedestrian wouldn't move so the Appellant told him he would run him over. The Appellant did in fact start to move his vehicle and the pedestrian had to jump out of the way. The Appellant acknowledged that he received a letter from MPIC stating that he was unsafe to drive and that his licence was suspended. He continued to drive without a licence and [Appellant's spouse]'s vehicle was impounded on one occasion as a result.

The Appellant stole [Appellant's son-in-law]'s truck, had a "couple of drinks" and decided to go "joy-riding" in the ditches with the truck. He was charged by police and when getting released, he got agitated and decided not to go home with [Appellant's spouse]. The police wrestled him to the ground and he was locked up until [Appellant's spouse] came to pick him up the next day.

The Appellant was asked to explain his behaviour. He stated that he has no idea why he behaved the way he did. He said that since the MVA he is sometimes afraid of his own self and has become like “Jekyl and Hyde”. He doesn’t think about consequences and just instinctively does what comes to his mind. He wondered if his medications had been ineffective. He would have good days and bad days where he would choose the wrong path.

The Appellant couldn’t recall how often he had trouble thinking rationally. At one time it was almost every day that any little thing would frustrate or annoy him and he’d had outbursts. He agreed that in the first few months after the MVA he had outbursts almost every day. He agreed that his outbursts were unpredictable. He stated that even the smallest thing would set him off in a rage. He stated that his outbursts had lessened one to two years after the MVA.

The Appellant agreed that he needed supervision because he was prone to behaving impulsively after the MVA. He stated that most of his outbursts were when he wanted his own way. His family would agree with him and try to keep him calm. He agreed that he ran some errands on his own at times and stated he didn’t know if he was able but “took risks”. He stated that they had mentioned to MPIC that he was starting to feel better and wanting to reduce the hours of supervision. The Appellant stated that he could not predict when he would have an outburst.

The Appellant was asked to comment on the days he was observed playing VLTs at a hotel lounge. He said those were days when he felt he needed to get out and “spread his wings”. He would get tired of being alone or being a kid supervised by a kid. He stated that he didn’t have any problems

playing VLTs because it requires no memory and there is nothing confusing. He admitted being frustrated when playing VLTs and hitting the machines.

His family hired [family friend #1] to supervise him, who the Appellant felt followed him around too much. When he first started supervising the Appellant, [family friend #1] was taking his job too seriously and was like the Appellant's shadow. The Appellant would tell [family friend #1] to get lost. When the Appellant was sitting on his deck reading the newspaper, he didn't want [family friend #1] sitting right beside him "doing nothing". He felt [family friend #1] should just stay in the house because the Appellant wasn't going anywhere. He didn't want [family friend #1] so close to him. He felt [family friend #1] was paid to supervise but not be on top of the Appellant's head all the time. The Appellant felt [family friend #1] quit supervising him because of the Appellant's "extreme belittling" of [family friend #1].

[Family friend #1] lived with the Appellant and his family for a period of time in order to supervise the Appellant. [Family friend #1] made sure the Appellant took a bath and ate. [Family friend #1] would take him out when the Appellant asked to go out. The Appellant felt [family friend #1] tried to please him. They would go out and play VLTs together.

After the MVA, the Appellant would often be awake at night. His sleep became interrupted and the Appellant couldn't get himself to sleep continuously. When [family friend #1] lived with him, [family friend #1] would sometimes watch TV with the Appellant when he was awake. They would play cards. [Family friend #1] was able to sleep on the couch to be with the Appellant while he was up at night. The Appellant acknowledged that he had occasionally snuck out at night while

[family friend #1] was sleeping. He left the house in whatever clothes he was wearing so he could "escape".

The Appellant had two surgeries on his hand, one in early July 2009 and the other in November 2011. The second surgery resulted in the Appellant having reduced range of motion in his hand. He still feels pain in his hand and his hand is often numb when it is cold. He has permanent nerve damage in his hand as a result of the MVA. The Appellant stated he was not fully recovered from the second surgery when MPIC terminated his benefits in February 2012. After his cast was removed, he was required to attend physiotherapy. However, as a result of MPIC terminating his benefits, his physiotherapy was also terminated. He feels he could have benefitted from more physiotherapy.

At no time since the MVA has the Appellant felt he could have ever returned to work at his pre-MVA employment. Neither of the surgeons who performed surgery on his hand has ever cleared him to return to his pre-MVA employment as a lab technician. He has not been able to do the fine motor work that his job requires. He has not been provided any retraining by MPIC, including any opportunity to do volunteer work. The Appellant stated that finding out that he couldn't return to his occupation was "a killer". He feels this added to his depression and frustration. He stated he hated himself as a result of learning this.

Prior to the MVA, he regularly bathed and shaved to go to work. After the MVA, he might go 3 or 4 days without bathing. This was the same with changing clothes. His caregivers would verbally

prompt him to bathe and change his clothes. He stated that hygiene became “secondary” for him after the MVA.

Starting about a month after the MVA, the Appellant began losing control of his urinary and bowel system. This has continued to today. He believes his family doctor said this could have been caused by the MVA and mentioned something about the brain. While he was referred to a neurologist, no scoping was ever done and this issue remains. He chooses to wear incontinence briefs when he goes out. He had none of these issues prior to the MVA. It is possible that the incontinence is due to the medication he takes but this has never been really explored.

The Appellant attended to [psychologist #3] in June 2011. The Appellant stated that [psychologist #3] was mad at him because he asked her whether she was provided a consent form to get his medical information from MPIC. He doesn’t remember what her response was, but stated that he believed she was upset. He stated that he had never signed a consent for MPIC to release his medical information before his appointment with her. He asked her if she received a consent form because he wasn’t sure what medical information she already had. He wanted to meet with [psychologist #3] before she was provided any medical reports from MPIC. However, [Appellant’s case manager] provided [psychologist #3] with 22 pieces of medical information without the Appellant consenting to its release. He stated that he felt betrayed when this was done. This made him think MPIC could do whatever they wanted and believes this led to a break down in communication with MPIC. The Appellant didn’t want to speak with [Appellant’s case manager] again.

In her report, [psychologist #3] wrote that he was a Caucasian male. She also wrote that she was provided no background information when in fact 22 documents were sent to her. The Appellant didn't know how he felt when he read these errors.

The Appellant felt that the neuropsychology assessment conducted by [psychologist #3] failed to take his culture into consideration. He identifies as "[text deleted]" and his culture is very important to him. Prior to the MVA, he visited [country #2] every second year and he tries to go yearly now. He feels [psychologist #3] did not consider his culture because he couldn't recall her asking what country he came from and she didn't delve into his roots. He doesn't feel she considered him. The Appellant acknowledged that "cultural issues" never caused him to misunderstand tests or assignments or any other problems with testing while in Canada or with any of his co-workers or supervisors. While the Appellant asserted that the testing conducted by [psychologist #3] had not taken his culture into account, he could not identify any questions posed that were culturally inappropriate.

The Appellant was asked to view and comment on video surveillance taken by MPIC over the course of his claim. The Appellant was asked to explain what he was doing in a video taken by MPIC on September 14, 2010. He stated he was repairing a fence board using a cordless drill. When he built the fence in 1999, it took him and a few others less than two days to build the 150 foot fence, including digging the posts. The video shows him taking 8 minutes to figure out how to screw in one fence board which the Appellant stated was "ridiculous". He stated that either [family friend #1] or [Appellant's son-in-law] had cut the board and all he had to do was screw it in. [Text deleted] was supervising him that day and she was in the house. While the Appellant

acknowledged that a cordless drill is a power tool, he didn't feel a cordless drill posed any risk to him given his impulsive behaviour.

He wasn't sure if MPIC was aware that he was doing maintenance around his home, but said that [psychologist #2] told him to continue to function the best he could. [Psychologist #2] would give him "nudges" to do things and his physiotherapist told him to "use it or lose it".

The Appellant stated he was very embarrassed to be struggling to take care of his home. He likes his lawn, including the boulevard, to be nice and clean and well-maintained. He is very meticulous. Before the MVA, he ensured his garage door and fascia were painted. He cleaned the eavestrough twice every year. He kept a very neat yard even at the cabin. He maintained a 24 by 10 foot garden. Even though he struggled with pain after the MVA, he tried to continue to do what he could. It's important for him to continue to do things.

Since the MVA, he doesn't like climbing heights because he gets dizzy. Once he bent down and lost his balance and another time fell going over to the neighbour. He's also had periods of blackouts. He was never dizzy falling down and having black outs before the MVA. He remembers [neurologist] telling him that his medication may slightly increase dizziness and impact coordination, but that he should continue to do as much physical and mental activity as possible.

The Appellant was asked to explain what he was doing on a video taken by MPIC on November 23, 2010. He became friends with one of the employees at [store] and liked to frequent the store. He would go there to pass the time and see some of the employees. He went to [store] with

[Appellant's son-in-law] that day so [Appellant's son-in-law] could get a discount. [Appellant's son-in-law] is a red-seal carpenter and the Appellant enjoyed shopping with him. [Appellant's son-in-law] is very understanding and patient with the Appellant. The Appellant acknowledged that [Appellant's son-in-law] was not the person who was listed as providing supervision on the MPIC forms. The Appellant wasn't sure but thought he went to [store] with [Appellant's son-in-law] on 5 occasions between August 2010 and August 2011. He also went once with his father-in-law. He asserted he never went alone.

The video shows the Appellant climbing a large rolling ladder in the lumber area. The Appellant stated he didn't feel unsafe doing this because the stairs were wider than his stairs at home and there were rails on both sides and a brake wheel. The Appellant decided to walk backwards down the ladder because he gets dizzy when he looks down. He has learned to cope with his dizziness by going down stairs backwards. The Appellant had no concerns about climbing the ladder.

The Appellant and [Appellant's son-in-law] loaded up [Appellant's son-in-law]'s truck with siding. The Appellant stated that he controls how much he uses his hand and knows how much he can push or pull before it hurts. The Appellant admitted to carrying a partial box that weighed 10 to 20 lbs.

The Appellant was asked about the load falling off the truck. The Appellant acknowledged that he assisted [Appellant's son-in-law] with picking up the boards. The Appellant stated that he has learned how to adapt without full use of his right hand. His left hand carries most of the weight while his right hand balances. He acknowledged that he was frustrated when the load fell off and swore profusely.

The Appellant acknowledged that they had to drive to an air hose and fill 3 tires after the truck lost the load. He acknowledged that he was frustrated yet didn't do anything impulsive. He stated that [Appellant's son-in-law] is a very patient guy and has ways to communicate with the Appellant that calms him.

The Appellant was asked about a day in December 2010 when, unsupervised, he took his vehicle to [store #2] for an oil change. He stated that he asked [Appellant's spouse] several times to do it. He had to do it himself because [Appellant's spouse] didn't do it. He agreed that if his family members don't do what he wants them to do he will do it himself. He admitted that he didn't have a driver's licence at that time. He hadn't planned to go by himself, but made a spontaneous decision to do it himself. [Text deleted] was supervising him that day and he doesn't believe he told her he was leaving. He went to [store #3] to buy his wife a Christmas card before going to [store #2]. After he had the oil changed he went to the [text deleted] hotel. It is a place where his "countrymen" go and he goes there to be "out with the boys", play VLTs and have a few beers. He got to the hotel, played VLTs and had a beer before calling [Appellant's spouse] to ask if she wanted to be picked up from work. [Appellant's spouse] told the Appellant to pick her up right away. When [Appellant's spouse] got into the car, the Appellant moved over so she could drive. On the way home, [Appellant's spouse] stopped at a grocery store on [street #1] and on [street #2]. The Appellant waited in the van while [Appellant's spouse] picked up a few items. When [Appellant's spouse] came out of the store, the Appellant wasn't in the van and the van was running. He had gone to a different store to see if he could use the washroom. The store wouldn't let him use the washroom so the Appellant urinated outside. The Appellant stated if he has to urinate he will just

go. He agreed that he never urinated in public before the MVA. The Appellant agreed that he didn't have any problems navigating as he drove through the city that day.

The Appellant agreed that the video surveillance conducted on that same day by MPIC shows the Appellant back at the house. The Appellant stated that he laid down in the snowbank by his house because [Appellant's spouse] and the Appellant had had an argument. The Appellant refused to go in the house because [Appellant's spouse] was yelling at him. The Appellant stated that his going to [store #2], the [text deleted] hotel and then to [store #4] to pick up [Appellant's spouse] was reported to MPIC by [Appellant's spouse].

The Appellant stated that MPIC was aware that he was continuing to do household chores and going outside for walks. The Appellant stated that at no time did any of his health care providers say that he had to remain solely in one spot. Rather, he was told by his physiotherapist to exercise his hand. He was told to exercise his brain. The Appellant's surgeon, [text deleted], told him to continue with normal functioning as much as possible.

The Appellant was asked to describe the events of March 28, 2011 and was shown video surveillance that was conducted by MPIC on that day. The Appellant took a taxi by himself to [psychologist #3]'s office for a scheduled appointment. MPIC was aware that he attended some medical appointments in a taxi on his own and the taxi was approved by MPIC. When he arrived at [psychologist #3]'s office, he discovered that the appointment was cancelled. This made him upset because he wasn't notified and got up early to attend the appointment. He decided to go to the [hotel #2] to play VLTs. He thinks he phoned his wife to tell her that the appointment was

cancelled, but didn't tell her he was going to play VLTs. He acknowledged that the taxi ride to the hotel was likely paid by MPIC.

When the Appellant arrived at the hotel, he went to the front desk to get the newspaper. He did the Sudoku and the crossword. He then went to play VLTs. He was bored with being at home and wanted to play VLTs. He talks with the regulars at the hotel to try to get away from his loneliness. When he arrived at the hotel, he was on the phone with either [family friend #1] or [Appellant's spouse]. He thinks he was speaking to [family friend #1] because [family friend #1] joined him at the hotel. When they play VLTs together, they sit in the same room but not next to each other. The Appellant acknowledged that [family friend #1] was sitting approximately 30 feet away from him while playing VLTs that day, but asserted that [family friend #1] had a clear view of him while playing the machine. At one point the Appellant left the hotel to go to the van. He believes that [family friend #1] wasn't aware that he left. He believes he went home without [family friend #1] because he was mad that his appointment was cancelled and mad that he lost at VLTs.

The Appellant was questioned about what transpired on August 30, 2011, another day where MPIC took video of the Appellant playing VLTs. The Appellant confirmed that he was playing VLTs at a hotel for approximately 5 hours. He stated that his son was supervising him that day and he snuck out in their van without his son's permission. His wife eventually found him at the hotel. The Appellant stated he had no problems playing VLTs alone that day. He didn't become frustrated.

The Appellant was asked about his activities on August 31, 2011 when he was observed driving with a suspended licence. His father-in-law had come over and wanted the Appellant's opinion on

a car he was considering purchasing. The Appellant stated that his father-in-law would normally consult with him on those sort of things. The Appellant looked over the bodywork and took it for a test drive with his father-in-law. His son is also on the video and is the person who was supervising the Appellant that day. [Family friend #1] had quit supervising the Appellant at that time because they had gotten into an argument. The Appellant told his son that he and his father-in-law would go to test drive the car. The Appellant stated that he test drove the car even though he didn't have a licence because his father-in-law asked him to. They went to [store] where the Appellant bought some screws. The Appellant is seen going to the lumber area because he went to say hello to his friend who works there. After [store], he drove home with his father-in-law. He told his son he was back when they got home. [Appellant's daughter] was also at home on that day. The Appellant believes he was properly supervised that day. His son was at home and knew where he was and his father-in-law was with him in the car and at [store]. The Appellant didn't know if his father-in-law knew that his licence was suspended at that time.

The Appellant was asked about how he filled out the forms for supervision. He wrote down the total hours of supervision for the whole day because he was only asked to put in the totals. MPIC never told him they required more specifics such as the exact times someone was supervising and when they took breaks. The Appellant stated he has never made false claims for benefits. It is quite the opposite. He has lost out due to his injuries. He had to sell property on which he intended to build his dream home. He had to cash in his RRSPs. He has not had any gains from the MVA, but rather lots of losses. By not working he hasn't been able to contribute to CPP.

The Appellant was asked to comment on medical reports that have indicated he has narcissistic traits or a personality disorder. He stated that professionals may deem that he has certain traits, but he has been like that all his life. He got along with people and functioned at a high capacity before the MVA. He stated that any personality traits he may have did not affect him in any way in his life before the MVA.

After the supervision benefits were terminated by MPIC, the Appellant continued to pay for care 2 or 3 days a week for a few hours at a time. After MPIC terminated all benefits and closed his file, the Appellant eventually applied for CPP disability benefits.

The Appellant was asked about his current functioning. He stated that mornings are still difficult for him. He still has pain in his hand and takes medication for this pain. His fingertips are tingly. He has nerve damage. He uses massage and heat to also control the pain.

The Appellant has stopped gambling and is only drinking socially and not as much as he was after the MVA. He feels he has more purpose to his life now that he has grandchildren. They have given him a new vision in life.

The Appellant was questioned about whether he had read the medical reports and other documents in his file. He stated that he has tried to read them but stated by the end of a paragraph he can't recall what he read. When the right time comes, he reads them but he forgets the next day. He noted that [Appellant's spouse] was acting on his behalf and doing most of the correspondence with MPIC.

[Family Friend #1]

[Family friend #1] currently works doing ordering, shipping and receiving for a [city #3] company. He is friends with the Appellant's children and has known the Appellant's family since he was a teenager. He visited the Appellant's home on a regular basis in the years before the MVA.

[Family friend #1] described the Appellant's behaviour and emotional state before and after the MVA and stated he feels that the Appellant changed significantly after the MVA. [Family friend #1] said before the MVA the Appellant was a "stoic man" and after he became more erratic and emotional. After the MVA, he became aggressive and had violent tendencies. He became rude and would belittle [family friend #1]. He would scream at people unprovoked and would swear a lot. [family friend #1] wasn't sure what the Appellant would do.

[Family friend #1] was hired by the Appellant's family to supervise the Appellant after the MVA. He even lived at the Appellant's house for a month. Most of the supervision he did was at night because the Appellant "would act up" at night. He would "move stuff around" at night, go outside in his underwear or wander off at night. They would watch movies, or play cards at night. The Appellant would sleep on one of the couches in the living room and [family friend #1] would sleep on the other couch.

During the day, [family friend #1] would take the Appellant to the lumber store, grocery shopping, and to play VLTs. Sometimes they would just hang out and the Appellant would do Sudoku. [Family friend #1] tried to keep the Appellant busy and would go with him wherever the Appellant wanted to go.

[Family friend #1] stated that the Appellant didn't like being supervised and would "kind of swear" at [family friend #1] to leave him alone. [Family friend #1] believes that the Appellant felt "like less of a man" when being supervised. When the Appellant was upset about [family friend #1] being close to him, [family friend #1] then went into the next room and just listened. Sometimes the Appellant would be in the backyard and get upset that [family friend #1] was outside with him, so [family friend #1] would go inside and watch the Appellant through the window. If they were out in public, [family friend #1] wouldn't always be next to the Appellant, but would stay where [family friend #1] could see him.

[Family friend #1] stated that the Appellant really couldn't take care of himself, so that is why [family friend #1] was there. The Appellant sometimes wouldn't eat. He soiled himself and wouldn't change. He wouldn't take his medications or a shower. Getting the Appellant to take his pills "took a lot of determination" on [family friend #1]'s part. The Appellant was sometimes destructive with property and would get frustrated and tear everything apart. [Family friend #1] then cleaned up after the Appellant.

[Family friend #1] stated that he quit supervising the Appellant because the Appellant behaved poorly to him, swearing at him a lot and being aggressive. [Family friend #1] stated that the Appellant was never like that before the MVA. The Appellant's constant swearing at [family friend #1] "took a toll".

[Family friend #1] was asked about video surveillance taken by MPIC on March 28, 2011. [Family friend #1] stated that he didn't always drive the Appellant to medical appointments. Sometimes the Appellant would take a taxi by himself. On March 28, 2011, [family friend #1] got a call from the Appellant around 10:00 or 11:00 a.m. The Appellant told [family friend #1] that he was at the lounge that they often frequented to play VLTs and asked [family friend #1] to pick the Appellant up. When [family friend #1] arrived at the hotel, the Appellant was not ready to go and wanted to continue playing VLTs. At one point the Appellant asked [family friend #1] for the keys to take cash out of the van. The Appellant played in his "usual area" on the bottom section while [family friend #1] sat in his "usual area" on the elevated area. [Family friend #1] could see the Appellant from his usual area. Sometimes the Appellant would go outside for 5 to 10 minutes for a cigarette and [family friend #1] would just wait for him inside and play VLTs. [Family friend #1] acknowledged that he was initially concerned about the Appellant going out for a smoke by himself, but over time knew he would come back when finished. [Family friend #1] acknowledged that on this one occasion the Appellant went outside the hotel and left with the van without [family friend #1], who then had to walk back to the Appellant's home.

The Appellant sometimes got frustrated with the VLT machines and would "hit the buttons on the machine obnoxiously". A woman once asked him if he needed to smack the machines and the Appellant responded by yelling and swearing at her. [Family friend #1] believes this occurred during the summer of 2011. [Family friend #1] stated that the staff at the lounge knew the Appellant and that he had a brain injury.

[Family friend #1] stated that when he wasn't supervising the Appellant he was being watched by his children and his father-in-law. He doesn't believe that the Appellant was ever left completely unsupervised. [Family friend #1] didn't feel that it would have been safe to leave the Appellant at home unsupervised because he talked about killing himself, had violent outbursts and "violent talk".

[Family friend #1] continued to supervise the Appellant from time to time after the termination of his benefits. On one occasion, [family friend #1] and the Appellant took a taxi to a restaurant and then walked home. The Appellant decided to go into the middle of the road and direct traffic. [Family friend #1] couldn't get him to stop so [family friend #1] phoned [Appellant's spouse] who came to pick them up. [Family friend #1] stated that supervising the Appellant was very challenging at times, but he continued to do it because he cared for the Appellant's family. [Family friend #1] stated that the Appellant's condition improved over time and that he feels like the Appellant is getting better.

[Family friend #1] acknowledged that one of the reasons for supervision was to control the Appellant's impulsive behaviour and outbursts. [Family friend #1] explained that he did that by keeping an eye on the Appellant, being calm with him and by physically holding the Appellant back. [Family friend #1] had to physically hold the Appellant 2 or 3 times after the MVA. When physically holding the Appellant, [family friend #1] tried to be as non-aggressive as possible and to use a gentle touch. [Family friend #1] stated that the Appellant had 3 or "maybe more" episodes of angry or impulsive behaviour per week in 2010 and 2011. The Appellant paced around, ranted and swore. [Family friend #1] just kept an eye on him and "let him do his thing" as long as he was

not a danger to himself or others. [Family friend #1] acknowledged that he gave the Appellant a lot of freedom. [Family friend #1] tried not to "stifle him" because the Appellant didn't like it. [Family friend #1] had to figure out how to deal with the Appellant on his own.

[Family friend #1] stated that the Appellant usually didn't get violent in public, but would say things under his breath. The Appellant was unpredictable, which is why he needed to be watched. The Appellant was easily frustrated and would get very angry. During the summer of 2011, he was working on his deck and couldn't get a nail into the wood. The Appellant kept banging and banging until his hand couldn't take it anymore and he flung the hammer. The Appellant would swear and display "angry body language".

[Family friend #1] was asked about video surveillance taken on November 23, 2010 when the load of plywood fell out of the truck and whether he was surprised that the Appellant didn't display any outbursts or erratic behaviour. [Family friend #1] responded that he wasn't surprised because the Appellant was with [Appellant's son-in-law], who could handle the Appellant well and calm the Appellant down.

[Family friend #1] acknowledged that the Appellant had used power tools after the MVA, including a power drill, skill saw, miter saw and belt sander. [Family friend #1] stated he was a little reluctant to let the Appellant use these tools, but the Appellant told [family friend #1] that his physiotherapist told him to use his hand. [Family friend #1] was not concerned about the Appellant using a power drill on the other side of the fence because a power drill "can't chop your finger

off". [Family friend #1] didn't have any concerns about the Appellant being able to carry light boxes.

[Family Friend #2]

[Family friend #2] has been an accountant for over 25 years and has known the Appellant and his family just over 20 years. Prior to the MVA, [family friend #2] saw the Appellant at many family gatherings, over holidays, at picnics and at the cabin. [Family friend #2] described the Appellant as a strong confident professional who was family oriented. He was very "well kept" and was hard working, never missing a day's work. He loved his work and his family.

[Family friend #2] described the change in the Appellant after the MVA. Initially he had a lot of pain in his hand and arm. It was to the point where he couldn't feed himself and had to learn to use his left hand. After the MVA, he stopped taking care of himself. He had to be told to bathe and change his clothes. He looked like he didn't care what he looked like. Before the MVA, the Appellant was well dressed and clean shaven. He cared about what he looked like and what he did.

After the MVA, the Appellant became more argumentative and wouldn't listen. He was also unsafe. One weekend at the lake the Appellant borrowed a ladder to cut some tree branches. He put the ladder against the tree and was holding onto the branch he was cutting so the ladder wasn't secured. The Appellant was upset when [family friend #2] told him to come down from the ladder.

Another time he took the truck out after having drinks. He drove carelessly without regard for his own and other's safety. He was picked up by the RCMP and [family friend #2] and [Appellant's

spouse] had to go get him. When they went to take him home, he ran away and the RCMP had to wrestle him to the ground.

On another evening the police showed up at the Appellant's house with an arrest warrant and the Appellant fought the officer. The police finally got the cuffs on the Appellant and took him to the hospital in his underwear. [Family friend #2] and [Appellant's spouse] then drove to the hospital to bring him his clothes.

[Family friend #2] stated that the Appellant was very depressed the second Christmas after the MVA and talked about killing himself. That way he wouldn't be a burden and no one would have to worry about him. [Family friend #2] wasn't used to hearing things like that from the Appellant. She was shaken by this.

Before the MVA, the Appellant was calm and mild mannered. After the MVA, any slightest thing "set him off". [Family friend #2] wasn't used to seeing this anger from the Appellant. He would yell at people, bang things, and knock things over. He wasn't rational.

The Appellant lost his memory after the MVA. He made plans and within a day or two didn't remember making those plans. He planted and watered the garden and then ½ hour later said he was going out to water the garden.

[Family friend #2] had many meals with the Appellant and [Appellant's spouse] after the MVA. The Appellant didn't want to eat. [Appellant's spouse] put food in front of him, but he wouldn't

eat it and shouted at [Appellant's spouse] to leave him alone. Before the MVA, [family friend #2] doesn't recall the Appellant ever playing VLTs. After the MVA, whatever money the Appellant got he put into a machine. [Family friend #2] saw the Appellant lose control of his bladder and refuse to change his clothes. [family friend #2] stated that the Appellant's functioning is somewhat better now, but not like he was before the MVA.

[Family friend #2] acknowledged that the Appellant had both good days and bad days after the MVA. Sometimes he would have 2 verbal outbursts in a day. It depended what was going on around them. [Family friend #2] didn't know how many times the Appellant displayed irrational behaviour. She stated that the Appellant would stop taking his medication when he was feeling good and then would "spiral out of control".

[Family friend #2] stated that the Appellant didn't like being supervised and wanted "to do his own thing". [Family friend #2] acknowledged that there were occasions when the Appellant was unsupervised at the cabin. She didn't know what year that occurred. There was another occasion that the Appellant went out unsupervised with a list from [Appellant's spouse] to do shopping. The Appellant was gone for 3 or 4 hours and came back with nothing. [Family friend #2] doesn't know when his occurred.

[Appellant's daughter]

[Text deleted] is the Appellant's daughter. She is currently an accountant for a health authority. She acted as the Appellant's representative at one point because he was confused and needed assistance and because [Appellant's spouse] was working for MPIC at that time.

[Appellant's daughter] stated that her relationship with her father was good before the MVA. The Appellant guided her through life. Before the MVA, the Appellant was a strong independent person. He was the leader of the family. He was very smart and a very hard worker. He was detail oriented, very disciplined and reserved. He played dominos and cricket. He was involved with the church and coordinated many family vacations and annual road trips. He planned where the family would go, who they would see and what activities they would do.

After the MVA, he was no longer the same person and she had to help him more. He was no longer that strong leader that he was before. He was confused a lot. He became angry, suicidal and violent. He had both physical and cognitive limitations. He began to chain smoke and became impulsive and obsessive. He could no longer think the way he used to. Before the MVA, he worked as a chemist. After the MVA, he didn't know simple math. He lost control of his bladder and bowel. He was confused about how to handle his incontinence and would sometimes just stay in his soiled clothes. After the MVA, his hobbies were going shopping and, when he could write again, doing the crossword and Sudoku.

After the MVA, MPIC provided funding for personal care for the Appellant. At first an agency was involved, but the Appellant wasn't comfortable with that person. The worker shared stories with the Appellant about how he killed people in [country] and that he himself was involved in a case with MPIC. The family decided that an outside person was not the best option. [Appellant's daughter] decided to take a year off school to care for the Appellant.

[Appellant's daughter] felt it was her duty to her family to take care of the Appellant, but that it was difficult because taking care of the Appellant put her life "on pause". Her graduation from business school was delayed as a result of staying home with the Appellant. She was also in a new relationship and dating wasn't the same. Her dates involved being at home with the Appellant. [Appellant's daughter] made the Appellant's meals and tried to get him to eat them. The Appellant didn't want to eat and there was a lot of back and forth with him swearing. The Appellant hated having to take his medication so [Appellant's daughter] needed to ensure he took his medication on time. [Appellant's daughter] also had to encourage him to maintain personal hygiene. The Appellant was clean shaven, showered daily and was well groomed before the MVA. After the MVA, he stopped showering every day, would wear dirty clothes and would even stay in clothes he had soiled.

After the MVA, the Appellant became angry and frustrated. If he had difficulties with doing things like changing a lightbulb he would "freak out" and start swearing. He "could go from 0 to 100 in seconds". One time at the cabin after the MVA they were sitting around the campfire and the Appellant went into a rage and ripped some of the siding off the cabin. He would go into a rage and yell and slap his head and jump up and down. He would even try to pull his hair out.

One on occasion he ran away from the house and [Appellant's daughter] and [Appellant's son-in-law] drove around the neighbourhood looking for him. They found him laying in the snow. He told them to leave him in the snow to die. [Appellant's son-in-law] picked him up and put him in the car. The Appellant kept his arms folded and his legs "super straight". He then refused to come

inside from the garage. They covered him up and let him stay in the garage until he finally came in.

The Appellant ran away another time and they found him lying in the backyard. He wouldn't come inside so they called 911. He was then taken to the hospital for a few days for monitoring. He said he wanted to die.

There were a few occasions where the garbage caught on fire because he put a lit cigarette in it. On another occasion he was trying to cook and there were flames. The Appellant dropped the pan on the floor and the kitchen mat and floor caught on fire.

One night [Appellant's daughter] found him reorganizing the knives in the cutlery drawer. A few days later he stated he was going to slit their throats so they hid the knives. The family got scared and started doing a before bed search so no weapons were around for him to hurt the family.

[Appellant's daughter] spoke about the occasion when there was a warrant after the Appellant's appointment with [psychiatrist #2]. She confirmed that a violent struggle occurred between the Appellant and the police which resulted in the Appellant being taken away without clothes on.

[Appellant's daughter] was asked to comment on the video surveillance taken on September 14, 2010 where the Appellant was on the outside of the fence trying to drill in a fence board. [Appellant's daughter] stated that the video doesn't show that she could see what the Appellant was doing from the top of the stairs inside the house. She said she sometimes supervised from a

distance so that the Appellant wouldn't feel like he was being babied. [Appellant's daughter] stated that the fence boards were pre-cut, so the only job for the Appellant to do was drill in the board. Before the MVA, the Appellant would have been able to drill in that board in maybe a minute. On the video it didn't appear that he was able to accomplish anything. [Appellant's daughter] wasn't concerned about the Appellant causing any damage while using the drill because he was physically unable to hold the drill for any length of time due to his injuries.

[Appellant's daughter] was asked to comment on the video surveillance taken on November 23, 2010 when [Appellant's daughter] indicated she was supervising the Appellant for 20 hours and the Appellant was at a hardware store. [Appellant's daughter] stated that the Appellant was with her spouse [Appellant's son-in-law] and she felt it was appropriate for the Appellant to be with [Appellant's son-in-law]. She stated that being with [Appellant's son-in-law] is the same as being with her. The Appellant went multiple times a week to the lumber store. He had a friend that worked there.

[Appellant's daughter] was asked to comment on the surveillance taken on December 8, 2010, which shows the Appellant going alone for an oil change and then to [store #3] and then to play VLTs. [Appellant's daughter] stated that they had made plans to do the oil change, run some errands and then pick [Appellant's spouse] up from work. However, when she went to get ready to go, the Appellant stole the keys and left without her. She immediately contacted [Appellant's spouse] to tell her that the Appellant took off in the vehicle without her. [Appellant's daughter] attributed the Appellant's behaviour to his impulsiveness and impatience since the MVA. He couldn't wait for [Appellant's daughter] to finish getting ready.

[Appellant's daughter] said that supervising the Appellant was not easy. She used to take instructions from him and now she had to try to get him to listen to her. He was erratic and unpredictable. She never knew who she would encounter on a day to day basis. His memory was poor after the MVA. He wouldn't remember what they had just talked about or recent plans they had made.

[Appellant's daughter] stated that the Appellant seemed to have a positive relationship with [psychologist #2]. As a result, [Appellant's daughter] started seeing him to learn to understand the Appellant and how to manage the Appellant's behaviour better. She does not remember when she attended for this counselling. [Psychologist #2] told her that he didn't know whether the Appellant would ever be the person he was before the MVA. [Psychologist #2] helped [Appellant's daughter] understand what had happened to the Appellant. He explained that the Appellant had a frontal lobe brain injury and that the frontal lobe controls impulses and compulsions. She described the year she supervised her father as stressful, emotional and isolating.

[Appellant's daughter] stated that when she supervised the Appellant his outbursts were daily. By the time MPIC conducted surveillance his outbursts had decreased to a few times a week, but she was not sure. When supervising the Appellant, she managed his outbursts by talking to him and asking him to calm down. If she had to, she would phone the police. His daily outbursts included swearing, yelling, throwing things, pulling his hair and slapping the walls or the ground. She believes his physical limitations triggered a lot of his outbursts.

The Appellant would get agitated, angry and “uneasy” when he wasn’t taking his medication. He tampered with his medication and tried to ween himself off it. They couldn’t use a bubble pack for the medications because the Appellant popped the bubbles and tried to reorganize them. His actions triggered the family to monitor his medications. However, the family chose not to lock up the medications. [Appellant’s daughter] stated that she wasn’t comfortable locking up his medication because she felt uncomfortable doing that to the Appellant even though it probably would have been the best thing to do. She did not discuss locking up the medication with [Appellant’s spouse] and doesn’t remember whether this was ever discussed with the Appellant’s doctors.

Notwithstanding that the Appellant was not compensated for 24 hour per day supervision, [Appellant’s daughter] asserted that the Appellant was never left home alone at any time because he had suicidal tendencies and was a fire hazard. He also couldn’t be left unsupervised in public because his behaviour was unpredictable. [Appellant’s daughter] acknowledged that most of his aggressive behaviours occurred when he was home.

[Appellant’s daughter] was questioned about video surveillance where the Appellant helped [Appellant’s son-in-law] pick up a load of lumber and the load slid off the truck. [Appellant’s daughter] asserted that [Appellant’s son-in-law] told her that the Appellant was swearing while they were picking up the wood. [Appellant’s daughter] was questioned about surveillance showing the Appellant being left alone outside his fence to use a power drill to attach a fence board. [Appellant’s daughter] acknowledged that she could not see his hands or what he was doing from

inside the house. However, she asserted that she could still see him standing outside the fence. She was unsure if anyone was outside with the Appellant at that time.

[Appellant's daughter] stated that the Appellant is "a little more balanced" now. He is less angry. However, he is still not the person he was before the MVA. He now goes out in sweatpants and still wears dirty clothes. He still does not have complete functioning of his hand. [Appellant's daughter] stated that the Appellant is not the brilliant person he was before the MVA. While the Appellant used to be suicidal, he now has stopped wanting to end his life. She believes this is due to having the right mix of medications and that he is now a grandfather.

[Appellant's son-in-law]

[Appellant's son-in-law] is a red seal carpenter working for the [text deleted]. He has known the family since 2008 and married [Appellant's daughter] in 2015. [Appellant's son-in-law] met the Appellant before the MVA. Before the MVA, the Appellant was "the strong silent type". He was neat and had attention to detail. Everyone seemed to look up to him. The Appellant changed "a lot" after the MVA. He was in a lot of pain and seemed always irritated. He didn't sleep very much. He "kind of lost his purpose". The Appellant's memory was poor after the MVA. He would forget conversations he just had. He was angry all the time and it didn't take much to get him upset. He would have temper tantrums where he would swear and bang on things like a chair or table. He would mash up his face and pull his own hair in anger. [Appellant's son-in-law] said he never saw this behaviour before the MVA. He stated that between August 2010 and August 2011, the Appellant's outbursts occurred "fairly often".

On one occasion the Appellant went missing and [Appellant's daughter] and [Appellant's son-in-law] drove around all evening looking for him. Eventually they found him laying on his back in a snow bank. He refused to come to the car and stated that he wanted to die and had nothing to live for. [Appellant's son-in-law] physically lifted the Appellant off the ground to take him to the car. When they got home, he refused to come inside so they covered him in blankets and left the car running. Eventually [Appellant's daughter] convinced him to come into the house. On another occasion the Appellant attempted to hang himself in his shed. [Appellant's son-in-law] persuaded him that he had a lot of things to live for and finally got him to come inside. [Appellant's son-in-law] stated that the Appellant talked about suicide all the time. [Appellant's son-in-law] confirmed that the Appellant stole his truck and drove recklessly in and out of ditches before getting stopped by the RCMP.

[Appellant's son-in-law] acknowledged that he went with the Appellant to the hardware store on November 23, 2010 when MPIC conducted surveillance. [Appellant's son-in-law] went there frequently with the Appellant after the MVA. [Appellant's son-in-law] had no concerns about the Appellant walking through the store by himself. The Appellant gets a discount because he knows one of the employees. [Appellant's son-in-law] had no concerns that the Appellant went up a ladder as it was basically a set of stairs with a railing. [Appellant's son-in-law] stated the platform was wide and that the Appellant was "totally safe". [Appellant's son-in-law] acknowledged that the Appellant helped him with unloading the lumber but stated that [Appellant's son-in-law] carried all the weight. He stated that the Appellant could not have lifted a box by himself but that he always wanted to try because he was "determined not to lose his identity as a guy". [Appellant's son-in-law] remembered a load of plywood falling off his truck. [Appellant's son-in-law] stated that

although the Appellant tried to help reload the truck he was really just getting in the way. [Appellant's son-in-law] stated that the Appellant was swearing and "in a state of panic a bit". [Appellant's son-in-law] had to calm him down and reassure him while loading up. [Appellant's son-in-law] stated that when they stopped to put air in the tires the Appellant was cussing because his arm was bothering him from the cold. [Appellant's son-in-law] told the Appellant to go back in the truck.

[Appellant's son-in-law] stated that he manages to get the Appellant to calm down by talking calmly and reassuring him. [Appellant's son-in-law] said the Appellant never seems to go too far when [Appellant's son-in-law] is around because [Appellant's son-in-law] has "a way with him".

[Appellant's son-in-law] was asked about the video where the Appellant is using a drill to put in a fence board. [Appellant's son-in-law] stated that the power drill the Appellant was using is not a power tool but just a drill with a tip on it. [Appellant's son-in-law] stated that it was not dangerous for the Appellant to use this drill and that it was better than using a screwdriver on his hand because of the twisting. [Appellant's son-in-law] commented that it took the Appellant a long time to put in a fence board. It would take [Appellant's son-in-law] less than one minute.

[Appellant's son-in-law] stated that the Appellant is doing better now. He has medication that he takes regularly and that suits him better. He has three grandkids now so has a sense of purpose.

Submission for the Appellant

[Appellant's spouse] submitted that the MVA was significant and traumatic and had resulted in a loss of consciousness. She referred to the statements from individuals who had seen the Appellant after the MVA but before the ambulance had arrived to take him to [town] to support the assertion that the Appellant was disoriented and behaved strangely after the MVA. Nearly two hours had passed between the time the Appellant woke up after the MVA and the time the ambulance arrived. He wasn't treated at hospital until nearly 3 hours had passed. Because of the delay between the MVA and getting treated, the Appellant's bizarre behaviour post MVA went undocumented except by the individuals who provided statements.

Chart notes from the day after the MVA show that the Appellant was complaining of a throbbing headache. The Appellant was released from hospital with severe right arm pain but without any treatment. When the Appellant re-attended to [hospital #2] because of his right wrist, it was the Orthopedics Service at [hospital #2] that contacted a TBI rehab specialist regarding the Appellant's cognitive dysfunction. The Appellant was then seen at the Outpatient TBI rehab clinic and admitted to the TBI unit at [health centre].

The Appellant was diagnosed with a TBI, right perilunate dislocation, and scaphoid and capitate bone fractures by [text deleted] in the [health centre] discharge summary. The Appellant was referred to [psychologist #2], a rehab psychologist, who diagnosed the Appellant with severe levels of anxiety and depression and PTSD. [Appellant's spouse] noted that the Appellant was on "suicide watch" while at [health centre]. The Appellant was "a fairly healthy individual" prior to the MVA and had had no hospital visits or any stays relating to mental health.

[Appellant's spouse] noted that the Appellant attended every medical appointment that was requested by MPIC and worked with all his health care providers. Despite being on medications, the Appellant's behaviour was not under control. She referred to the many instances of the Appellant's unsafe and erratic behaviour. Some of these incidences included involvement with police, ambulance and the mobile crisis unit. One incident resulted in the Appellant's driver's licence being suspended as a result of his medical condition. [Appellant's spouse] submitted that MPIC's letter suspending his driver's licence shows that MPIC clearly had concerns about the Appellant's behaviour, his safety and the safety of others.

Despite having a suspended licence, the Appellant drove a vehicle without a licence resulting in the vehicle being impounded. This was communicated to [Appellant's case manager]. In fact, as the Appellant's erratic behaviour continued, [Appellant's spouse] did her best to inform both [Appellant's case manager] and [Appellant's case manager #2] what was happening. At no point did [Appellant's case manager] or [Appellant's case manager #2] doubt these incidences had taken place or ask [Appellant's spouse] for proof.

[Appellant's spouse] referred to [Appellant's son-in-law]'s and [family friend #2]'s testimony, who both told of instances they had witnessed. The Appellant took [Appellant's son-in-law]'s truck without permission and drove recklessly down the perimeter while impaired. [Family friend #2] witnessed the RCMP tackling the Appellant to the ground when she and [Appellant's spouse] went to pick up the Appellant. [Family friend #2] also witnessed the Appellant trying to fight the police and the police then taking him in handcuffs in his underwear to hospital. [Appellant's

spouse] referred to many other instances, including documentation of the Appellant's suicide attempts.

[Appellant's spouse] noted that two investigators followed the Appellant and his family around his home and the community for over one year yet only relied on six days of surveillance to terminate benefits. [Appellant's spouse] submitted the activities on those six days do not accurately reflect the way the Appellant was functioning for the whole year. [Appellant's spouse] noted that on many days of surveillance, the Appellant didn't even leave the house.

[Appellant's spouse] submitted that the 20 hours of PCA included 2 hours related to physical tasks relating to the Appellant's arm. As a result, only 18 hours was supervision. Therefore, the expectation of MPIC was that the Appellant would be unsupervised for 6 hours per day.

On September 14, 2010, the Appellant was only alone 8 minutes. [Appellant's spouse] submitted that the 8 minutes captured on video very well could have been part of the time that the Appellant was not being supervised. On November 23, 2010, the Appellant was on video for 3 hours. He was not alone, but rather with [Appellant's son-in-law]. However, even if [Appellant's son-in-law] was not considered to be supervising the Appellant, the 3 hours could have been part of the 6 hours that the Appellant was left unsupervised.

On December 8, 2010, the Appellant was on video for 2.5 hours alone. It is possible the 2.5 hours were part of the 6 hours per day that the Appellant was left unsupervised. In any event, the incident of December 8, 2010 was reported by [Appellant's spouse] to [Appellant's case manager] on December 14, 2010 as is noted in the MPIC file notes. [Appellant's spouse] submitted that the

same information that she reported as problematic is being used by MPIC to support their position that he is functioning quite well and doesn't require supervision.

On March 28, 2011, 16 hours of PCA were claimed by the Appellant; 2 hours related to his hand and 14 hours of supervision. The Appellant was caught on video for 5.5 hours. [Appellant's spouse] submitted that perhaps this time was part of the 10 hours that day the Appellant was not supposed to be supervised. In any event, the Appellant was supervised by [family friend #1] during those 5.5 hours. We heard that [family friend #1] attended the hotel to be with the Appellant.

On August 30, 2011, the Appellant claimed 20 hours of PCA; 2 hours related to his hand leaving 18 hrs for supervision. The Appellant was still expected to be alone for 6 hours. The video shows the Appellant alone for 5 hours and 22 minutes. [Appellant's spouse] submitted that this time could have been part of the 6 hours that the Appellant was expected to be alone.

On August 31, 2011, the Appellant claimed 20 hrs of PCA, 18 of which were for supervision. The Appellant's son was supervising him that day. The Appellant went with his father-in-law to [store] for a couple of hours. [Appellant's spouse] submitted that this time could have been part of the 6 hours that the Appellant was not supervised.

[Appellant's spouse] noted that most of what was caught on video was information that was already shared with MPIC. [Appellant's spouse] expressed concern to [Appellant's case manager] about the Appellant playing VLTs. The surveillance captured the Appellant going to a medical appointment alone in a taxi, an activity that was approved by MPIC. The surveillance captured the

Appellant shopping, climbing a ladder, and fixing a fence. [Appellant's spouse] reported to [Appellant's case manager #2] that she was pushing the Appellant to assume tasks around the house. She reported to [Appellant's case manager] that she was encouraging the Appellant to participate in home maintenance so he could regain his functioning.

[Appellant's spouse] submitted that they had never reported that the Appellant couldn't walk or go out. After discharge from [health centre], the Appellant was encouraged to go walking and MPIC even paid for a fitness program at the [gym] that the Appellant attended on his own.

[Appellant's spouse] reviewed the calculations for the amount of PCA that was paid. The total received per month was $4084 which included MPIC approved reimbursement for a cell phone. It was agreed that the Appellant needed to have a cellphone so that the family could contact him. This left a balance of $4053.26 for PCA. MPIC advised that they were required to pay minimum wage even if using family and friends. During the year surveillance was conducted, minimum wage was $9.50 per hour. Therefore, supervision cost the Appellant $190 per day. $4053.26 divided by $190/day = 21.33 days. [Appellant's spouse] submitted that there was "no way" they could have afforded to pay someone for 20 hours of care. MPIC did not provide enough money to cover the supervision so they had to be creative. This meant the family had to determine the risk level and decide when care was provided, how often, by whom, and what activities were done. [Appellant's spouse] submitted that they were creative with care and flexed the time to provide it when the Appellant needed it the most. [Appellant's spouse] submitted that she worked full time and needed sleep to be able to work the next day. Therefore, she needed supervision mostly on

overnights. This is because the Appellant was awake at night and she referred to the "common theme" throughout the medical reports that the Appellant had difficulties sleeping.

[Appellant's spouse] noted that if the family had continued to use an agency like [text deleted], they would have been paying $25.25 plus GST for a total of $26.77 per hour of care. At 20 hours that equals $535.50 per day, which is only 7.57 days of care. It would not have been financially feasible to provide a reasonable level of care with an agency.

[Appellant's spouse] reiterated that MPIC never defined supervision and left it to the family to determine how it was provided. The Appellant was a proud man and didn't want to be controlled or supervised. [Appellant's spouse] referred to reports of the Appellant saying he was tired of having someone care for him. [Appellant's spouse] discussed this with [psychologist #2], who advised her that the Appellant could be supervised from a distance. [Psychologist #2] told [Appellant's spouse] that it was demeaning to the Appellant to have someone with him all the time and if the supervision could be provided from a safe distance, it would be more acceptable to the Appellant. [Appellant's spouse] reiterated that the Appellant did not want to be supervised.

[Appellant's spouse] submitted that throughout the life of the Appellant's claim, a significant effort was made by MPIC to determine whether or not the Appellant had suffered a TBI in order to justify his behaviours and need for PCA. [Appellant's spouse] submitted this preoccupation in finding out whether or not the Appellant had a TBI caused MPIC to overlook whether he had a psychiatric issue as a result of MVA rather than a brain injury. [Appellant's spouse] submitted that the medical information should have triggered the need for an exploration of the Appellant's mental state.

[Appellant's spouse] submitted that throughout the claim she was looking for answers as to the root of the challenges faced by the Appellant. It was difficult for the family to pinpoint the exact cause of the Appellant's problems. He had difficulty with sleep, eating and his medication. He had an allergic reaction to an anti-depressant. He had chronic pain in his right arm. He had difficulties with accepting the change in his life, difficulties with accepting that he couldn't return to work and difficulties with his self-image.

Despite termination of all the Appellant's benefits, at no time was it ever determined that the Appellant could physically return to work. The Appellant's second surgery to his hand was not done until November 18, 2011. In this surgery, his right wrist was partially fused. The Appellant's hand was in a cast and then in a sling for four weeks followed by physiotherapy. At best, he may have been able to return to work to modified duties in the second week of March. However, the Appellant's benefits were terminated while he was recovering and physiotherapy benefits were terminated. At the time benefits were terminated, it was unclear when the Appellant would be able to reach his maximum medical improvement.

MPIC retained an occupational therapist to conduct cognitive and physical demands analyses of the Appellant's pre-MVA employment as a lab technician. The cognitive demands analysis report found that the Appellant's position required a "high demand for attention and concentration", that "insufficient attention to detail will result in work errors and/or inefficiencies", and that "intense attention to detail or concentration is required for the majority of the shift". The physical demands analysis report found that the Appellant's position requires "frequent fine motor work bilaterally" and a "high degree of precision work, accuracy is vital". While the position does not require full

hand active range of motion, one “must be able to hold small tools with good pinch strength and excellent hand sensation”. [Appellant’s spouse] submitted that the Appellant could not meet these requirements of his position after the surgery and still cannot to this day.

[Appellant’s spouse] submitted that if it was MPIC’s view that he could return to work, MPIC should have moved “one step further” and helped the Appellant re-enter the workplace. Rather, MPIC took the easy way out and terminated the file. [Appellant’s spouse] submitted that had MPIC put the same amount of effort into vocational rehab that they put into surveillance, perhaps the Appellant would have been placed into employment today.

In October 25, 2010, [psychologist #2], the Appellant’s treating psychologist, prepared a report for MPIC. [Psychologist #2] concluded that “on a balance of probabilities” and based on his medical history, the collateral information from his wife and his daughter, the review of all the available medical information, most of the Appellant’s present difficulties are likely associated with the MVA. [Psychologist #2] notes the “unsettled question and conflicting information” regarding whether or not the Appellant suffered a TBI. In his final comments, [psychologist #2] recommends a case conference with MPIC and the Appellant’s caregivers to formulate a plan for the Appellant to discuss further rehabilitation, including PCA. MPIC does not follow up on this recommendation.

Independent of MPIC, the Appellant, through his physician, attended to a psychiatrist, [Appellant’s psychiatrist], who diagnosed the Appellant with moderate post-traumatic stress disorder (PTSD) and mild/moderate depression. [Appellant’s spouse] submitted this is consistent with the findings

of [psychologist #2]. After benefits were terminated, the Appellant was referred by his physician to [text deleted], a neurologist, who agreed that the Appellant's symptoms are compatible with "posttraumatic syndrome" and stated that "the fact that these symptoms have persisted for this long postinjury is not unusual". [Appellant's spouse] submitted that as much as MPIC was looking for answers so was the Appellant and his family.

The Appellant continued to see [Appellant's psychiatrist]. In his report dated July 23, 2015, [Appellant's psychiatrist] confirms the diagnosis of PTSD and states that the Appellant's prognosis is quite guarded as "PTSD is a notoriously-difficult condition to resolve, being of a very chronic and persistent nature".

[Appellant's spouse] discussed the allegation that the Appellant was attempting to get "secondary gain from the MVA". She stated that the MVA has had a negative impact on the Appellant's life. He has suffered a loss of his job, loss of ability to fully care for himself, extreme financial losses, loss of relationships with friends and his son, and loss of ability to drive. The amount of money paid for supervision didn't even cover the amount of supervision the family tried to provide. At one point, [family friend #1] lived with them in exchange for food and room and board because they could not afford to pay him for the amount of supervision he was providing.

With respect to the allegation that the Appellant provided false and misleading information, the only misleading statements concerned the second visit to [psychiatrist #2] and the issue of the Appellant being detained in a psychiatric facility. [Appellant's spouse] submitted that the Appellant did not want to be locked up. The Appellant felt betrayed by [Appellant's case manager

#2] because he thought he was going to see [psychiatrist #2] to discuss a change in medication and not to discuss being locked up. The Appellant fled [psychiatrist #2]'s office, went to [city #4] and then went to the cabin. [Appellant's spouse] submitted that she supported the Appellant by telling [hospital #2] that the Appellant was with her at the cabin for the entire week and that he was doing better. [Appellant's spouse] acknowledged that she and the Appellant gave misleading information regarding this incident. She submitted that because this misleading information was provided, [psychiatrist #2] changed his opinion about the Appellant without seeing him again. [Psychiatrist #2]'s second report was shared with other care providers who all began changing their opinions. [Appellant's spouse] submitted there was a "domino effect".

[Appellant's spouse] submitted that MPIC didn't fulfill their role to advise and assist the Appellant. She stated there were many administrative delays in the file, such as delays in receiving IRI, PCA and medication reimbursement. They struggled getting medications and taxis approved. There were difficulties in getting copies of the medical reports. For example, the Appellant was assessed by [psychologist #3] in March 2011, but this report was not shared with the Appellant until August 2011. The Appellant had 5 different case managers and 4 different supervisors assigned to his file. Had they had concerns, they could have visited the Appellant at any point to see how he was doing first hand. Had MPIC had concerns with the PCA, they could have suspended PCA rather than jump to terminate all of the Appellant's benefits.

[Appellant's spouse] submitted that the Appellant's medical records show that he was not required to use any of the medications before the MVA. [Appellant's spouse] stated that preparation for this hearing made her think that perhaps some of the Appellant's symptoms were due to the

medications. It was for that reason that she submitted information regarding the side effects of the various medications. She noted that [psychologist] in his report of January 4, 2011 stated that medication effects may have been a component to his memory difficulties. [Appellant's spouse] submitted that this was never followed up on by MPIC.

[Appellant's spouse] addressed MPIC's position that it seeks to have approximately $26,000.00 in PCA benefits repaid to MPIC for the period of March 2011 to December 2011. [Appellant's spouse] noted that the last PCA assessment before March 2011 took place on May 10, 2010. While a reassessment was scheduled in September 2010, it was not completed. [Appellant's spouse] submitted that it appears it was [psychologist #3]'s "March 2011" report that determined supervision was no longer needed. [Appellant's spouse] submitted that if MPIC felt that supervision was not needed in March 2011, a PCA reassessment should have been conducted at that time. However, it wasn't until August 2011 that MPIC informed the Appellant that supervision would be gradually decreased. At that time, [Appellant's spouse] requested instructions on the reduction in supervisions hours. [Appellant's spouse] questioned why MPIC would determine that supervision was no longer needed as of March 2011 yet indicated supervision would be gradually reduced in August 2011. [Appellant's spouse] submitted this was an example of MPIC not advising and assisting the Appellant correctly.

[Appellant's spouse] submitted that it is unreasonable to expect the Appellant to repay PCA benefits from March 2011 when the Appellant did not have the information from [psychologist #3]'s report until August 25, 2011.

[Appellant's spouse] submitted that MPIC improperly terminated the Appellant's benefits and asked that all benefits be reinstated, including IRI and the payment of rehabilitation and medication expenses. She clarified that supervision was terminated long before all benefits were terminated and the Appellant did not seek a review of the termination of supervision. [Appellant's spouse] submitted that compensation for the Appellant's permanent impairments remains unresolved.

Submission for MPIC

Counsel for MPIC submitted that there are two issues to be determined: whether the Appellant knowingly provided false information and whether the Appellant is required to reimburse for PCA payments he received between March 28, 2011 and December 31, 2011.

Counsel reviewed the reports of the Appellant's behaviour and referred to [text deleted]'s neuropsychological assessment report dated September 25, 2009, EP's November 25, 2009 report, [psychiatrist #2]'s March 5, 2010 report, [text deleted]'s December 2 and 3, 2010 file notes, and [psychologist #3]'s June 22, 2011 neuropsychology report. Counsel submitted that the file documents show that the Appellant and his family have described the Appellant as having extreme angry outbursts, violent behaviour, and confusion and memory difficulties as well as being impulsive, deliberately reckless and careless, and attempting to do self-harm. Counsel submitted there is a continuity of reporting these behaviours from shortly after the MVA up to termination of the benefits.

Counsel asked the panel to compare these behaviours as reported with what was seen on the video surveillance and asked that the panel view the video surveillance in its entirety.

Counsel submitted that the video of the Appellant using a power drill on a fence board shows that the Appellant appears to have been allowed to work independently with power tools with no visible surveillance. While [Appellant's spouse] has argued that the Appellant was being supervised from a distance by [Appellant's daughter] and either [Appellant's son-in-law] or [family friend #1] or both were present, there is no evidence of anyone supervising him when he was operating the cordless drill. Counsel questioned how assertions could be made that the Appellant became frustrated and displayed signs of erratic and unsafe behaviour while the Appellant was able to use a cordless drill without any apparent supervision nearby.

On November 23, 2010 the Appellant was seen at [store] walking in the lumber yard, climing a set of stairs to assist in moving boxes of siding and putting plywood boards in a truck. He was seen using a compressor to refill truck tires. He was seen assisting physically with removing large awkward objects without apparent frustration or difficulty. He was in a stressful situation when the boards fell off the truck yet assisted in reloading without any apparent outrage or erratic misbehaviour. We heard testimony that the Appellant became angry and was swearing and [Appellant's son-in-law] was able to calm him down. Counsel submitted that becoming angry and swearing is what most people would do. While the medical reports describe that the smallest incident could set the Appellant in a rage, that did not happen here. To the contrary, the Appellant displayed normal functioning. While it was suggested that the Appellant only lifted a small amount of weight, the surveillance shows the Appellant handling a large awkwardly shaped box with no difficulties and that he was an active participant in putting the plywood back into the truck.

On December 8, 2010 the Appellant spent the majority of the day unsupervised without portraying any erratic behaviour. He went shopping, got an oil change, and attended a bar to play VLTs. He was able to drive to [store #4] where he picked up his wife. Counsel acknowledged that the Appellant had an argument with [Appellant's spouse] and lay in the snow outside. Counsel acknowledged that laying in the snow is consistent with reports of erratic behaviour. However, the Appellant only lay in the snow for 4-5 minutes and then the incident quickly resolved. Counsel submitted that this is the only such incident in the course of surveillance. Counsel acknowledged this incident was reported to MPIC and conceded that, on its own, the December 8, 2010 surveillance would not serve as basis for termination. Counsel submitted that the Appellant`s activities that day suggests an ability to function and a general lack of erratic behaviour.

On March 28, 2011, the Appellant left [psychologist #3]'s office in a taxi and went to play VLTs for almost 5 hours until he got in a van and drove away. He was out in public for almost 5 and ½ hours with no incidents of erratic behaviour. Counsel acknowledged that [family friend #1] did arrive to supervise the Appellant, but submitted there was no evidence that [family friend #1] was required to actively correct the Appellant's behaviour while he was playing VLTs that day.

Counsel explained that the issue is not the Appellant playing VLTs while being supervised, but rather that the Appellant didn't demonstrate any of the concerns that caused the need for supervision such as signs of confusion and erratic behaviour.

On August 31, 2011, the Appellant went to [store] with his father-in-law. The evidence was that the father-in-law was aware of the Appellant's condition, yet handed the vehicle keys to the

Appellant to do a test drive. Counsel submitted this suggests a lack of concern about the Appellant's ability to safely operate a vehicle.

Counsel submitted that the surveillance shows the Appellant in public for hours at a time, four instances of him driving a vehicle despite his licence being suspended and alleged concern for his driving. This lackadaisical approach to limiting his driving goes against that this was a major concern. The videos show the Appellant has the ability to accomplish tasks and assist others.

With respect to the argument made that MPIC only authorised 18 hours per day of supervision leaving 6 hours unsupervised, counsel submitted that even given the reports of difficulty sleeping, the time authorized by MPIC would cover waking hours.

Counsel acknowledged that the maximum payment of PCA is a legislated amount and did not dispute that this amount would not cover paying someone minimum wage to supervise for 20 hours per day. Counsel submitted that it isn't the case that MPIC terminated as a result of the Appellant being unsupervised. Rather, the Appellant's activities on the surveillance video show that he reasonably should not have been supervised. Counsel noted that the most obvious activity that should have required supervision was when the Appellant used power tools to repair the fence. Had the Appellant really needed supervision, it would have been reasonable for someone to be there supervising him, but there was no supervision. Counsel acknowledged that there are no MPIC guidelines for those providing supervision and no requirement that supervisors have any specific qualifications.

Counsel referred to the report of [MPIC's consulting clinical psychologist] dated November 10, 2011 where he reviews the surveillance and concludes that the behaviour and activities that the Appellant exhibited on the surveillance are not consistent with an individual requiring supervision.

Counsel submitted that the surveillance was taken on 20 days which represents a significant amount of time. Counsel submitted that it is unreasonable to suggest that surveillance happened to be on the Appellant's good days and happened to miss behavioural problems when the Appellant was in his house or at night. Counsel submitted that this response renders the evidence "unfalsifiable". It is not reasonable to say someone only has problems on times and places that are inaccessible to surveillance.

Counsel submitted that there are serious concerns with the credibility of the Appellant and that their evidence should be treated skeptically. Multiple physicians, including [psychologist #3] and [psychologist] note the discrepancies between the Appellant's reports after the MVA and the condition noted by emergency staff when the Appellant was transported to and arrived at hospital. Counsel noted [psychologist]'s report where he states that there is no independent medical documentation from either ambulance reports or hospital contacts that the Appellant sustained a clinically significant brain injury. [Psychologist] finds that there was no early report that the Appellant was unconscious at any time and all parameters in regards to the possibility of having a clinically significant brain injury were negative. Counsel submitted that it is unreasonable to presume that the Appellant went from out of control and unable to control himself because of serious trauma to the condition that the paramedics noted in less than 2 hours. Counsel submitted

that paramedics are trained in evaluating the condition of patients on the scene quickly and that paramedics' reports are also consistent with the hospital emergency staff.

Counsel addressed the incident with [psychiatrist #2] and how it was reported to MPIC. It is first referenced in an email from an MPIC manager to the case manager on May 19, 2010. The manager reports that the Appellant left the appointment with [psychiatrist #2], said he would follow up with [psychiatrist #2] on the Monday, failed to show up on the Monday, the family was not aware of whereabouts and the police were contacted. [Appellant's spouse] thought the Appellant may have travelled to [city #1]. The hospital reports state that the Appellant reported that he left [psychiatrist #2]'s office, took a cab to visit his son at work and then went to the cabin with [Appellant's spouse]. The hospital record goes on to state that according to [Appellant's spouse] the Appellant was fine. [Appellant's spouse] spent the week trying to convince the Appellant to get checked out. They returned to the city. The Appellant reported he was "in a good mood lately".

[Appellant's case manager]'s file notes record a different version of events. While the Appellant reported that he went to [city #4] and then the cabin, he also reported that he had not seen [Appellant's spouse] the entire time he was away. [Appellant's spouse] also reported to [Appellant's case manager] that she had not seen the Appellant that week. During the testimony it was suggested that the Appellant and [Appellant's spouse] only lied to the hospital. However, they also lied to [psychiatrist #2] and MPIC.

Counsel noted a file note of a conversation between [Appellant's case manager] and [Appellant's spouse]. [Appellant's case manager] told [Appellant's spouse] that the hospital report stated she

and the Appellant were together the week after seeing [psychiatrist #2], but that was not what MPIC had been told. [Appellant's spouse]'s response was "what difference does it make what was said to the [hospital #2] staff". Counsel submitted this statement further points to concerns around [Appellant's spouse]'s credibility.

Counsel submitted the reports of [psychiatrist #2], [psychologist] and [psychologist #3] indicate that the Appellant misrepresented and questioned the credibility of the Appellant's report of symptoms. In his report dated September 16, 2010, [psychiatrist #2] concluded that the Appellant and [Appellant's spouse] "are able to provide a history and present in a way based on getting their needs met rather than in cooperating in a way that would allow for a reasonable and appropriate assessment". [Psychiatrist #2] stated he shares some of the concerns described in the Appellant's medical file that the discrepancy in the Appellant's presentation, his history and the clinical findings "are not consistent, are not explained as a product of a mental illness but could be explained as a product of his attempt to obtain secondary gain from his unfortunate accident…"

[Psychologist] also noted "grave concern" regarding the discrepancies between [psychiatrist #2]'s May 26, 2010 report and the hospital report as these discrepancies speak to either a purposeful misrepresentation of the severity of his symptoms to [psychiatrist #2] or the purposeful understatement of symptoms to the hospital psychiatric staff as well as the purposeful misrepresentation of where the Appellant was and [Appellant's spouse]'s level of concern. [Psychologist] concluded that "there clearly was a purposeful misrepresentation here and this speaks to the larger issue of weight that can be paid to [the Appellant's], and his wife's subjective and unverified reports of his symptoms".

As a result of the noted discrepancies in the Appellant's and [Appellant's spouse]'s reporting of symptoms and events, [psychologist #3] noted that reliance on objective documentation regarding the injury severity would be recommended in lieu of a reliance on the Appellant's self-reported information.

Counsel submitted that the secondary gain for the Appellant in this case is PCA benefits in the amount of $26,000.

Counsel addressed the Appellant's allegations that MPIC failed to advise and assist the Appellant pursuant to s. 150 of the MPIC Act. Counsel submitted that s. 150 does not apply to customer service issues such as delays in payment and does not mean that MPIC cannot make mistakes. With respect to the caregiver provided to supervise the Appellant, the evidence is that MPIC did not select the particular caregiver and once issues were brought to MPIC's attention about this caregiver, MPIC offered to pay for a different care provider. It was ultimately the family's decision to provide their own care. MPIC's role was one of funder and this cannot form the basis of any findings under s. 150.

With respect to consent to forward documents to [psychologist #3], it was acknowledged that [Appellant's case manager] mistakenly sent the Appellant's information to [psychologist #3] before consent was obtained. However, despite having received this information, [psychologist #3] did not refer to it and only reviewed it and commented after consent was obtained. Although the release of information by [Appellant's case manager] was a mistake, this error was corrected and handled professionally.

With respect to the allegation that the second meeting with [psychiatrist #2] was held under false pretences, [psychiatrist #2]'s report of May 26, 2010 shows that he reviewed the Appellant's recent activities and decided on the need for hospitalization after discussion with the Appellant and [Appellant's spouse]. Counsel noted that the idea of hospitalization was something [Appellant's spouse] had discussed with [psychologist #2] and was not something that would have come as a complete surprise.

With respect to the Appellant's suggestions that MPIC never assisted the Appellant on return to work, but rather focussed on surveillance, counsel submitted no medical reports on file suggested that the Appellant was ready to return to work. For that reason, case management never began the return to work process. If false information had not been provided, the return to work process may have happened in the future.

With respect to the Appellant's suggestion that MPIC focussed on disproving the brain injury rather than exploring psychological symptoms, counsel submitted it was necessary for MPIC to determine whether the Appellant had a TBI, post concussive syndrome, PTSD or some other diagnosis. There were a wide range of diagnoses and MPIC did investigate whether the Appellant had psychological symptoms. MPIC sent the Appellant to [psychiatrist #2] for the assessment and sought a psychological review from [psychologist] as well as requested reports from the treating psychologist, [text deleted]. Counsel submitted that MPIC was looking for answers on the diagnosis and condition of the Appellant.

Counsel acknowledged that [psychologist] raised the possibility of the presence of medication side effects. However, [psychologist] stated it as a possibility only and does not include this issue with his conclusions. It is noted that the Appellant did not pursue follow-up on the issue of possible medication side effects with the prescribing physicians at that time.

Regarding the issue of the relationship between [Appellant's case manager] and [Appellant's spouse], [Appellant's case manager #2] was assigned to manage the file until [Appellant's spouse] was no longer an employee of MPIC.

Counsel submitted that multiple sections in the MPIC Act can result in revocation of benefits. Subsection 160(a) addresses the providing of false or inaccurate information and goes to the heart of the good faith relationship between insurer and insured. In most cases, if breach of 160(a) is found, termination is the appropriate sanction given that the breach of s. 160(a) is a fundamental breach of the relationship. Counsel submitted that termination of all benefits was the appropriate sanction in this case because of the false information that the Appellant provided. Counsel clarified that the false information in this case is that the Appellant's reporting of both his physical and emotional functional ability to MPIC and his health care providers contradicts what is shown on video. Counsel acknowledged that MPIC's medical consultant did not provide an opinion comparing the Appellant's reports of physical ability to his physical functional ability as shown on the videos. Counsel nonetheless asserted that the Appellant's reports of physical functional ability contradict the Appellant's physical abilities as shown on the video surveillance.

Counsel advised that MPIC has identified the repayment period of PCA benefits to be March 28, 2011 to December 31, 2011, noting that PCA funding was reduced to 0 hours for supervision as of October 1, 2011. Counsel acknowledged that MPIC provided no reason for the start date of March 28, 2011, but submitted that, given that termination is based on surveillance from August 2010 through August 2011, March 2011 strikes a balance between the start and end of surveillance. Multiple sessions of surveillance need to be conducted over time to ensure that a claimant isn't having their benefits terminated for a single outlier event. Counsel submitted this is a responsible way to handle a claim where there is a potential for termination due to the providing of false information.

Counsel submitted that the Internal Review Decision should be upheld.

Discussion

Subsection 160(a) of the MPIC Act states:

> **Corporation may refuse or terminate compensation**
>
> 160 The corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person
>
> (a) knowingly provides false or inaccurate information to the corporation;

Section 149 addresses the obligation of a claimant to notify MPIC of a change in situation:

> **Claimant to advise of change in situation**
>
> 149 A person who applies to the corporation for compensation shall notify the corporation without delay of any change in his or her situation that affects, or might affect, his or her right to an indemnity or the amount of the indemnity.

Subsection 184(1) addresses the powers of the Commission on appeal:

Powers of commission on appeal
184(1) After conducting a hearing, the commission may
(a) confirm, vary or rescind the review decision of the corporation; or
(b) make any decision that the corporation could have made.

The onus is on the Appellant to show that, on a balance of probabilities, the Internal Review Officer erred in upholding the case manager's decision to terminate the Appellant's PIPP benefits for knowingly providing false or inaccurate information to MPIC. As indicated, the panel is satisfied that the Appellant has met this onus.

MPIC takes the position that the false or inaccurate information in this case is the Appellant's reporting of his physical and emotional functional ability to his health care providers that contradicts the Appellant's physical and emotional functional ability as shown on the video surveillance conducted over one year.

Unlike any of the health care practitioners who provided care or assessed the Appellant, the panel was able to hear not only from the Appellant and [Appellant's spouse], but also his daughter, son-in-law, a non-family paid caregiver, and a family friend. In addition, we were provided written statements from those who knew and observed the Appellant both before and after the MVA and those who witnessed his behaviour on the night of the MVA. With respect to the written statements, counsel for MPIC did not ask any of these witnesses to be produced for cross-examination.

The panel found the testimony of [Appellant's daughter], [family friend #1], [family friend #2] and [Appellant's son-in-law] to be credible. They all testified in their own words, sharing what

they observed and experienced when interacting with the Appellant. The panel did not find any of these witnesses to be exaggerating or embellishing and the panel accepts their evidence.

Despite concerns raised by counsel for MPIC regarding the credibility of the Appellant and [Appellant's spouse], their reports of the Appellant's change in emotional functioning is corroborated by the witnesses. For example, [Appellant's daughter] reported that the Appellant changed after the MVA. He became angry, suicidal and violent. He was confused at times with both physical and cognitive limitations. He began to chain smoke and became impulsive and obsessive. He was often angry, frustrated and impatient. He would often go into a rage, yelling and swearing. He talked about suicide and had threatened to kill the family.

[Family friend #1] reported that the Appellant had changed after the MVA. He became more erratic and emotional after the MVA and had aggressive and violent tendencies. He would scream and swear. The Appellant wouldn't eat, take his medications or change his soiled clothes. He got frustrated and was destructive with property. He talked about killing himself, had violent outbursts and "violent talk".

[Family friend #2] described the change in the Appellant after the MVA. He stopped taking care of himself. He had to be told to bathe and change his clothes. The Appellant became more argumentative and wouldn't listen. Any slightest thing "set him off". He would yell at people, bang things, and knock things over. He wasn't rational. He had trouble remembering things. He was also unsafe and had altercations with police. He talked about killing himself.

[Appellant's son-in-law] reported that the Appellant changed "a lot" after the MVA. He was in a lot of pain and seemed always irritated. He didn't sleep very much and his memory was poor. He was angry all the time and it didn't take much to get him upset. He would have temper tantrums where he would swear and bang on things like a chair or table. He would mash up his face and pull his own hair in anger. The Appellant talked of suicide "all the time" and [Appellant's son-in-law] witnessed the Appellant attempting trying to hang himself.

Accordingly, the panel accepts that the Appellant's behaviour and emotional functioning was markedly different after the MVA such that the Appellant's family and friends were reasonably concerned about his well-being and the well-being of others. As a result, the Appellant's family felt that the Appellant required PCA, which included not only assistance with daily needs but also someone to supervise the Appellant. It is noted that the Appellant and his family initially thought that the Appellant sustained a clinically significantly brain injury; the Appellant left [health centre] with the diagnosis of having had a TBI.

An occupational therapist (OT) retained by MPIC conducted a PCA assessment of the Appellant and determined that the Appellant was entitled to supervision. We accept the evidence of [Appellant's spouse] that nothing was given to the Appellant to explain what is meant by supervision and what the expectation was regarding the level of care. Counsel for MPIC confirmed that there are no pamphlets or policies describing supervision and what is required. However, according to the PCA assessment tool supervision "applies when the victim requires basic or skilled supervision for behavioural or medical issues that are not covered in section 1, such as

supervision in the home during the day or during sleeping hours". The OT is required to record and explain the hours per day needed for supervisory care.

On September 29, 2009, the OT completed the PCA assessment tool and stated the following regarding the Appellant's supervision needs: "client is safe to be left unattended at this time. He recently had a neuropsychologist assessment and discussion with this physician determined that he is safe to be left alone but at times can make questionable decisions. At this time client reports that his children are mostly at home with him anyways but that this is not required". On November 23, 2009, the Appellant's case manager advised that the Appellant's supervision and assistance for his physical needs would be reduced to 20 hours a day. This was later clarified as being 1.79 hours per day for personal care needs and 18.21 hours a day for supervision. The case manager noted that the Appellant was approved to have a cell phone which would aid in decreasing the amount of "direct time" that the Appellant needed to have someone supervise his activities. There is no indication in the case manager's decision regarding supervision nor in the PCA assessment tool on what basis supervision is being provided and what supervision entails given that the Appellant would have a cell phone so "direct time" could be reduced. The panel agrees with [Appellant's spouse] that the implication is that the Appellant was given funds for an MPIC approved cell phone so that he could be out and about on his own.

The next PCA assessment tool was completed on May 10, 2010 and states the following regarding supervision "based on [psychiatrist #2]'s psychiatric assessment, it is recommende [sic] that [the Appellant] have supervision at all times to ensure his safety". No specifics are given as to what

particular behaviours gave rise to the conclusion that the Appellant was to be supervised "at all times". There is no indication that MPIC increased the supervision to 24 hours per day.

In the referral letter, [Appellant's case manager] asked [psychiatrist #2] to provide an opinion on whether supervision for daily activities, transportation and general overall safety is a necessity. In his March 5, 2010 report, [psychiatrist #2] noted that the Appellant's impulsive, aggressive and potentially dangerous and erratic behaviour resulted in the Appellant's family being frightened about leaving the Appellant on his own. This is supported by the testimony of [Appellant's daughter], [family friend #2], [family friend #1] and [Appellant's son-in-law] and in the witness statements. [Psychiatrist #2] noted that the Appellant's distress was exacerbated by his lack of independence and his feelings of uselessness and failure. This is also supported by the testimony of [family friend #2], [family friend #1] and [Appellant's son-in-law]. [Psychiatrist #2] opined that the Appellant will likely not recover until he is able to feel competent, independent and regain the respect of his family but that it will be difficult to facilitate this process if at the same time the Appellant needs constant monitoring. [Psychiatrist #2] determined this would require some work with [psychologist #2], the Appellant and the family to encourage more healthy behaviour and to regain the trust the family requires in order to facilitate less supervision. [Psychiatrist #2] indicated that he relied on [psychologist #2]'s opinion regarding the rate at which supervision was no longer needed. This is consistent with the testimony of [Appellant's spouse] that the Appellant didn't want to be supervised and they were trying to develop his independence by having the Appellant do more activities and supervise from a distance.

While the PCA assessment tool and the case management decision letters never expressly state why supervision was being recommended and approved, it appears that supervision was provided as a result of the reports of the Appellant acting impulsively, erratically, and aggressively. As indicated, these behaviours were not only described by the Appellant and [Appellant's spouse], but were also confirmed by the testimony of [Appellant's daughter], [family friend #1], [family friend #2], [Appellant's son-in-law] and the witness statements.

MPIC decided to undertake surveillance of the Appellant. The referral came a short while after the incident with [psychiatrist #2] and the issue of the Appellant being involuntary hospitalized for assessment and treatment. There is no question that the Appellant and [Appellant's spouse] gave a different picture of the Appellant's functioning to the hospital staff than they gave to [psychiatrist #2]. There is also no question that the Appellant and [Appellant's spouse] were dishonest about their whereabouts to both hospital staff and later to MPIC. When he learned of the discrepancy in reporting, [psychiatrist #2] initially stated in his letter of May 26, 2010 that "he cannot explain the discrepancy in history provided" and that he couldn't provide any reasonable suggestions for treatment because of his inability to obtain a reliable history. The Appellant and [Appellant's spouse] did not meet with [psychiatrist #2] again and therefore did not explain what had happened and why they did what they did.

[Psychiatrist #2] was later asked by MPIC whether the events between May 14 and 21, 2010 would lead him to revise his findings, diagnosis or recommendations. Without having any further discussions with the Appellant and [Appellant's spouse] about what had transpired, [psychiatrist #2] determined that the Appellant and [Appellant's spouse] are able to provide a history and

present in a way based on getting their needs met rather than in cooperating in a way that would allow for a reasonable and appropriate assessment. [Psychiatrist #2] indicated that "malingering" would need to be included in the differential diagnosis. He further stated that the discrepancy in the Appellant's presentation, history and findings are not consistent and not explained as a product of a mental illness but could be explained as a product of the Appellant's attempt to obtain secondary gain.

The panel accepts the evidence of the Appellant and [Appellant's spouse] that the Appellant did not want to be hospitalized. It is noted that the issue of hospitalization was raised with [Appellant's spouse] by [psychologist #2] a few weeks earlier. MPIC's file notes dated April 29, 2010 document that [Appellant's spouse] did not want to hospitalize the Appellant at that time and if there was concern for safety she would call 911. It appears that after discussion with [Appellant's spouse], she agreed with [psychiatrist #2] that the Appellant should be hospitalized. She has provided no information as to why she had changed her mind. Nonetheless, after the Appellant showed up at the cabin and spoke with [Appellant's spouse], she decided to support her husband and let the "form 4" expire before returning to the city. The fact that the Appellant did not want to be hospitalized is supported by the uncontroverted evidence that the Appellant resisted the police, refused to cooperate and needed to be dragged out in handcuffs to the hospital. Considering the evidence as a whole, the panel finds that the Appellant and [Appellant's spouse] purposefully understated and minimized the Appellant's symptoms to hospital staff so that the Appellant would not be involuntary hospitalized.

The suggestion appears to be that the Appellant and [Appellant's spouse] have either concocted or exaggerated the Appellant's symptoms and behaviour for some sort of secondary gain. The panel notes that at no time during the claim has the Appellant ever been cleared to return to his pre-MVA employment. This was acknowledged by counsel for MPIC. Rather the medical evidence shows that the Appellant never regained the fine motor skills in his right hand, his dominant hand, to be able to return to work as a lab technician. Therefore it appears he was entitled to receive IRI benefits notwithstanding any psychiatric or behavioural issues. Accordingly, the only possible "gain" appears to be the amounts paid for PCA, specifically supervision. The panel does not accept that [Appellant's daughter]'s sacrifice of taking time off of university and her personal life to stay home with her father for what amounts to be significantly less than minimum wage could be interpreted as a "gain". Further, there were no gains to the Appellant and [Appellant's spouse] when they hired [family friend #1] to supervise the Appellant and have [family friend #1] move into their house. The panel also accepts the evidence of the Appellant, [Appellant's spouse], [Appellant's daughter] and [family friend #1] that the Appellant did not want to be supervised as it made the Appellant feel like a child and inferior. While secondary gain is sometimes an issue of concern on insurance claims, the panel does not accept this as a credible conclusion in this matter considering the evidence as a whole.

MPIC relies on the video surveillance taken between August 2010 and August 2011 to support the proposition that the Appellant provided false information about his emotional functioning as he was viewed on the videos as being able to be "out and about on his own with no supervision, appearing fully functional and exhibiting normal behaviour".

Significant portions of the video surveillance were shown during the course of the hearing, some several times. In addition, at the request of counsel for MPIC, the panel viewed the surveillance in its entirety as part of its deliberations. After viewing the surveillance and considering the explanations and clarifications from [Appellant's spouse], the Appellant and other witnesses, the panel concluded that the surveillance did not support the conclusion that the Appellant provided false information to MPIC regarding his physical and emotional functioning.

One of videos relied on by MPIC was taken on September 14, 2010 when the Appellant attempted to repair a fence board. While the Appellant is seen standing outside the fence and no-one is seen standing with him, we accept the evidence of [Appellant's daughter] that she was home supervising the Appellant that day and that she was inside the house and kept an eye on the Appellant through the window. In addition, we accept that either [family friend #1] or [Appellant's son-in-law] was inside the yard. In any event, there is no indication in any of the MPIC documents that the individual who was supervising was expected or required to stand next to the Appellant at all times and that the Appellant was unable to use a cordless drill. We accept the evidence of [Appellant's spouse] and the Appellant that he was expected to attempt to try to do activities around the home and we find it reasonable that the Appellant attempted to use a drill to do a repair.

The panel finds that this video shows the Appellant struggling to do a task that he would have been able to easily do before the MVA given his experience building his own fence and past history of assisting a carpenter with deck building and other home renovations. The Appellant visibly showed signs of struggling to repair a single fence board for several minutes, which the panel finds should not have been such a struggle given his pre-MVA work history.

MPIC relies on video taken on November 23, 2010, showing the Appellant assisting [Appellant's son-in-law] in purchasing lumbar. The panel accepts the evidence that [Appellant's son-in-law] was able to calm the Appellant when he was with him. While we agree that this incident does not show the Appellant in a state of rage and out of control, we accept the evidence of [Appellant's son-in-law] that the Appellant was in fact agitated, was swearing, and "in a state of panic a bit" when the plywood fell off the truck. Although the Appellant tried to help reload the truck, [Appellant's son-in-law] stated that the Appellant was really just getting in the way. The panel agrees with the characterization that the Appellant was not much of a help and finds that the bystander and [Appellant's son-in-law] appeared to have done the bulk of the work.

MPIC relies on video taken on December 8, 2010 when the Appellant went to [store #3], [store #2] and the [text deleted] to play VLTs. The panel accepts the submission of [Appellant's spouse] that this incident is, in fact, an example of the Appellant acting impulsively. We accept the evidence of [Appellant's daughter] that the plan was for [Appellant's daughter], who was supervising the Appellant that day, to go with the Appellant to get the oil change, but that the Appellant refused to wait the ten minutes for [Appellant's daughter] to get ready and left without her. We accept the evidence of [Appellant's daughter] that she called [Appellant's spouse] to advise her that the Appellant had taken off without her.

While it is clear the Appellant was able to be alone that day without incident, the video also shows the Appellant refusing to go into the house at the end of the day and lying in the snow outside. Counsel in fact acknowledged that the Appellant lying in the snow was an example of erratic behaviour, but stated it was only for 4-5 minutes before resolving. The panel finds that it is not

normal behaviour for a grown man to refuse to come into the house but rather to lay down in the snow outside for 5 minutes in December after having a disagreement with one's spouse. The panel finds that this is an example of the Appellant's bizarre behaviour and cannot be minimized.

MPIC relied on video taken on March 28, 2011 when the Appellant took a taxi to a hotel to play VLTs. The Appellant was approved to take taxis to medical appointments unattended. We accept the Appellant's evidence that he was upset that his appointment with [psychologist #3] was cancelled and rather than go home, went to a hotel to play VLTs. As [family friend #1] was supervising the Appellant that day, [family friend #1] brought the van to the hotel to be with the Appellant once he was notified that the Appellant went to the hotel rather than go home. We accept his evidence that, while not visible on the video, [family friend #1] watched the Appellant play VLTs from his usual spot and was aware that the Appellant left the hotel to go to the van. While we agree with counsel for MPIC that there is no evidence that [family friend #1] was required to correct the Appellant's behaviour while he played VLTs, the evidence was that the Appellant left the hotel without [family friend #1], forcing [family friend #1] to find his own way back to the Appellant's house. The Appellant wasn't sure why he abandoned [family friend #1], his caregiver, after having called [family friend #1] to meet him at the hotel, but believed it was because he was mad that his appointment was cancelled and mad that he lost at VLTs. The panel finds that this was not reasonable behaviour and, finds this to be an example of the Appellant acting impulsively.

MPIC also relied on surveillance taken on August 30, and 31, 2011. However, by this time, MPIC had already communicated to the Appellant that supervision was being phased out with no more approval for supervision after October 1, 2011. It appears that the Appellant and [Appellant's

spouse] accepted this decision as they did not file an application for review of this decision. While the Appellant appeared to be unsupervised for portions of time while he was playing VLTs, he was not unattended on August 31, 2011. We accept the evidence of [Appellant's spouse] that the Appellant chose to leave the house alone on August 30, 2011 contrary to the family's wishes.

The panel notes that, during the time of surveillance, supervision was in fact reduced to 16 hours per day as a result of [Appellant's spouse] writing to [psychologist #2] on November 8, 2010. Proof that this letter was faxed to [psychologist #2] was provided at the commencement of closing argument. In her letter, [Appellant's spouse] states that she would like the Appellant to become well enough so PCA funding could be gradually reduced and eventually eliminated. [Appellant's spouse] agreed there had been small improvements in the Appellant's behaviour and asked the supervision be reduced to 16 hours per day. [Appellant's spouse] indicated that she can't get sleep unless someone is supervising the Appellant as his behaviour is unpredictable. This is consistent with [Appellant's spouse]'s testimony that she required supervision at night so she could sleep to go to work.

Despite conducting surveillance of the Appellant for a year, there are only a few instances where the Appellant was out alone during this time. There are several days where the Appellant did not even leave the house. When the Appellant did leave the house alone without supervision, [Appellant's spouse] would usually report this activity to MPIC. We accept the evidence of [Appellant's spouse] and the other witnesses that the Appellant had good days and bad days and therefore that there were days where he did not act impulsive and go into a rage.

Ultimately, MPIC determined that supervision would be gradually reduced to zero. While [Appellant's spouse] questioned this decision, the Appellant did not seek to have it reviewed by the Internal Review Office.

We have already noted that the PCA assessment tools and the case manager's decisions regarding supervision do not expressly identify why supervision is being provided. However, there appears to be other administrative flaws with respect to supervision such as no guidance as to what was expected of the caregivers. It does not appear any real guidance was provided by MPIC to the family, who appears to have taken direction from [psychologist #2]. It is noted that [psychiatrist #2] initially deferred to [psychologist #2] regarding supervision.

Of course an obvious flaw in the administration of supervision is that a claimant is required to account for a certain number of hours of supervision to be able to receive payment from MPIC, but actually not be able to compensate the supervisor for these hours. [Appellant's spouse]'s calculations were not challenged, and counsel for MPIC acknowledged the shortfall, who explained that the maximum amount of PCA is legislated. Nonetheless it is absurd for MPIC to require the Appellant to claim for 18.21 hours per day of supervision knowing that funds were not available for that amount of supervision per day. The reality is that despite being told he would obtain 20 hours per day of PCA and requiring him to claim for that amount, the Appellant was never reimbursed for 20 hours per day of PCA at minimum wage. We note the case manager referenced "round the clock supervision" and "full time supervision" in the decision letter terminating benefits even though the Appellant never received funds to cover "round the clock supervision". We accept the evidence of [Appellant's spouse] that the family was creative in

dealing with the supervision, doing their best to ensure the Appellant was watched and monitored as much as possible. It is not realistic under this system that the Appellant would never not be out and about on his own, especially when he did not want to be supervised.

[Psychologist #2], the Appellant's treating psychologist, provided a psychological progress report dated October 25, 2010, addressing a number of questions posed by MPIC, including whether the Appellant still required supervision. Having received [psychiatrist #2]'s and [psychologist]'s reports, [psychologist #2] suggested that a meeting should be held with the Appellant, [Appellant's spouse], his caregivers, [psychologist], MPIC and others to discuss the Appellant's rehabilitation. [Psychologist #2] opined that this meeting would serve the "complicated current situations in many ways" such as reviewing PCA, rehab activities, and outcomes and expectations. The meeting would speed up the Appellant's recovery and determine the next steps.

This is similar to [psychologist]'s recommendation that it would be useful to meet with the Appellant, [Appellant's spouse] and the assigned rehab consultant to review the Appellant's status and "to speak assertively on rehabilitative steps to normalize his life and engage in appropriate treatment". No such meetings were scheduled. Rather than build upon the recommendations of [psychologist #2], the treating psychologist, and [text deleted], the psychologist who conducted what appears to be a thorough psychological review, the Appellant was sent for a neuropsychological assessment with [psychologist #3].

It appears that [psychologist #2] was one of only two practitioners who was able to obtain information from someone other than the Appellant and [Appellant's spouse], in this case the

daughter. It is noted that [psychologist] raised the issue of wanting to obtain collateral information, specifically from those who saw the Appellant right after the MVA. The issue of collateral information was also raised by [MPIC's consulting clinical psychologist], MPIC's consulting clinical psychologist, who indicated that a number of documents should be obtained should further review of the Appellant's file be required. [MPIC's consulting clinical psychologist] also suggested that, prior to further review of the file, collateral/external verification be obtained concerning a number of significant events described by the Appellant and [Appellant's spouse] which relate to the Appellant's psychiatric symptoms such as police reports, and witness reports.

Despite these concerns about obtaining collateral information, no such information was obtained and the Appellant attended to [psychologist #3] for a neuropsychological assessment. There is no indication that [psychologist #3] interviewed [Appellant's spouse] or any of the other caregivers regarding the changes in the Appellant post-MVA. [Psychologist #3] attributed the Appellant's post-MVA behaviours of suicidal ideation, aggressiveness, episodes of rage and impulsiveness as being due to the Appellant's pre-existing narcissistic and/or borderline personality traits. [Psychologist #3] does not address the issue of post-MVA adjustment difficulties as raised by [psychologist #2] and [psychologist] and the role of the MVA given that the significant change in the Appellant's behaviour post-MVA. In any event, the issue of causation of the Appellant's psychological difficulties is not before the panel. MPIC terminated all PIPP benefits because MPIC believed the Appellant gave false information about his functioning.

Counsel for MPIC took the position that the Appellant also reported physical difficulties that contradicted the Appellant's physical functioning shown on the video surveillance. We disagree.

A review of the video surveillance often shows the Appellant using his non-dominant hand, his left hand (LH), rather than his injured hand, his right hand (RH). When carrying a garden hose, the Appellant is seen using his LH. When carrying a light bag, he is seen quickly transferring it to his LH. He is shown watering with his LH. When he talked on the phone he used his LH predominantly. We accept the evidence that while the Appellant attempted to help [Appellant's son-in-law] with boxes and carrying lumber, the Appellant was not able to carry much weight and used his RH for balancing. In any event, the videos show mostly gross motor tasks and not fine motor tasks, which was the Appellant's main challenge besides feeling pain and numbness.

The PCA assessment of May 2010 noted that the Appellant could carry very light items with his RH and with "a very gross grasp as he has no fine motor control in his fingers". The Appellant was deemed to be independent with climbing stairs, eating and drinking, grooming and bathing and the preparation of light meals and some light housekeeping. An April 14, 2010 OT report recommended that while the Appellant would discontinue the formal strengthening program, he was to "continue strengthening" his RH. This is consistent with the Appellant's evidence that he was encouraged to use his RH to develop strength. On September 27, 2010, [orthopedic surgeon] reported that the Appellant was slightly improved but was still complaining of "some pain in the wrist as well as numbness to his thumb and lesser digits". [Orthopedic surgeon] noted slight irregularity of the radiocarpal articulation, which likely indicated from early posttraumatic arthritis. [Orthopedic surgeon] opined that the Appellant was unable to return to work because "a lot of activities that he does at work require fine manual dexterity, which the Appellant is not able to do at present". [Orthopedic surgeon] indicated that the Appellant would be able to perform sedentary or light duties, but at no point advises the Appellant he has significant lifting restrictions

with his RH. [Orthopedic surgeon] opined at that time that the Appellant may have permanent stiffness in his hand and weakness with grip strength. It is noted that the Appellant was scheduled for a second surgery on his hand in November 2011.

Considering the evidence as a whole and based on the foregoing, the Commission finds that the Internal Review Officer erred in concluding that the Appellant knowingly provided false or inaccurate information to MPIC regarding his physical and emotional functional abilities and therefore that the Appellant was required to repay PCA benefits to MPIC. Accordingly, the Commission finds that, the Internal Review Decision dated December 2, 2013 should be rescinded and the Appellant's appeal allowed.

The Commission orders that the Appellant's entitlement to PIPP benefits, including IRI, be reinstated from February 21, 2012, the date of termination. The assessment of benefits owed will be referred back to case management for determination. It is noted, and conceded by counsel for MPIC, that there is no evidence that the Appellant has ever been cleared to return to work to his pre-MVA employment.

This decision should not be construed as condonation for the Appellant's and [Appellant's spouse]'s dishonesty to MPIC when addressing the Appellant's whereabouts during the week [psychiatrist #2] issued the "form 4". We agree with counsel for MPIC that honesty and good faith go to the heart of the relationship between an insurer and the insured. Accordingly, the Appellant is cautioned to remember his obligations to MPIC and, in particular, his obligations under s. 149 of the MPIC Act.

Dated at Winnipeg this 19th day of March, 2020.

KARIN LINNEBACH

SUSAN SOOKRAM

PAUL TAILLEFER