Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-13-146

PANEL:	**Pamela Reilly, Chairperson** **Leona Barrett** **Brian Hunt**
APPEARANCES:	**The Appellant, [text deleted], appeared on her own behalf;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Steve Scarfone.**
HEARING DATES:	**March 9, 2022; March 10, 2022; March 15, 2022; March 16, 2022; March 17, 2022.**
ISSUE(S):	**Whether the Appellant's Personal Injury Protection Plan (PIPP) benefits were properly terminated pursuant to section 160(a) of The MPIC Act;** **And if so, whether MPIC is entitled to reimbursement of $25,717.00 pursuant to section 189(1) of The MPIC Act.**
RELEVANT SECTIONS:	**Sections 160(a) and 189(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')**

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

Reasons For Decision

Background

On January 9, 2010, the Appellant was the driver of a vehicle that was struck by another vehicle (on the passenger side), which forced the Appellant to drive onto the median of the

roadway (“Jan 2010 MVA”). As a result of this collision, the Appellant reported injury to her neck, back, right hand, pinky and ring fingers, as well as headaches and dizziness. Five months later, the Appellant reported pain and swelling to her right ankle.

At the time of the Jan 2010 MVA, the Appellant worked as a [text deleted] worker. She could not work as a result of her Jan 2010 MVA and MPIC paid her Personal Injury Protection Plan (“PIPP”) benefits in the form of Income Replacement Indemnity (“IRI”) benefits and physiotherapy expenses. By December 2010, the Appellant had begun a gradual return to her [text deleted] work, working 3-4 hours per day, 3 days per week.

On November 8, 2011, while driving from [text deleted] to her residence in [location], the Appellant collided with a deer (“Nov 2011 MVA”). The collision caused approximately $8,000.00 damage and MPIC considered the vehicle a total loss. The Appellant reported injuries of a concussion, whiplash, and soft tissue injury to her back, shoulders and wrist, as well as a re-aggravation of her ankle injury. A December 2011 opinion from MPIC’s Health Care Services (“HCS”) medical consultant determined that the Appellant’s ankle injury was not causally related to the Jan 2010 MVA.

Subsequent to the Nov 2011 MVA, the Appellant initiated physiotherapy (January 5, 2012). The physiotherapist diagnosed whiplash and associated muscle spasm. On February 27, 2012, the Appellant’s physician diagnosed whiplash and concussion. A subsequent neurological examination did not find evidence of an organic neurological disorder. A March 2012 physician’s report stated that the Appellant had made slow but good progress and was capable of returning to work in some capacity.

Between February 2010 and March 2012, the Appellant completed numerous Level of Function ("LOF") forms to describe her functional capabilities. The Appellant recorded that she had limited function when walking, standing, bending, squatting, sitting, twisting and driving. These activities were limited because of neck and shoulder pain, as well as ankle pain. She required a neck brace for driving on the highway and an ankle brace for walking.

MPIC conducted surveillance of the Appellant on various dates, as follows:

November 14, 15, 16, 25, 26, 27 & 30 of 2011;
January 24, 25, 26 & 27 of 2012;
March 3, 8, 13 & 14 of 2012.

Based upon a review of the surveillance videos, MPIC's HCS medical consultant concluded that there was a discrepancy between the Appellant's reported level of function and the Appellant's observed movements. The medical consultant stated that the discrepancy in physical functioning could not be explained by the Appellant's use of analgesic or other medication. The medical consultant concluded in a report dated July 13, 2012 that the Appellant did not suffer MVA injuries that prevented her from working.

MPIC also found discrepancies between the Appellant's documented return to work days, the surveillance evidence, and the reported income on the Appellant's 2010 and 2011 income tax returns.

MPIC therefore concluded that the Appellant had knowingly provided false or inaccurate information and terminated PIPP benefits by decision letter dated November 14, 2012.

Further, MPIC advised the Appellant that she was obligated to repay one year of benefits in the amount of $25,717.00. The Appellant appealed this decision to the Commission.

Issues

Whether the Appellant's PIPP benefits were properly terminated pursuant to section 160(a) of the Act and, if so, whether MPIC is entitled to reimbursement of $25,717.00 pursuant to section 189(1) of the Act.

Disposition

The Panel finds, on a balance or probabilities, that MPIC properly terminated the Appellant's PIPP benefits in accordance with s. 160(a) and the Appellant shall repay MPIC the overpayment of $25,717.00.

The Hearing

As a result of safety considerations arising from the pandemic, and with the parties' consent, the hearing of the appeal was conducted remotely, through videoconference technology.

The Appellant utilized the Commission's public access workstation. The Chair noted that she was accompanied by a male individual, explained the rule about exclusion of witnesses, and asked if the individual would be testifying. The Appellant responded that she understood, stating that the individual was her common law partner, [text deleted], who would not be testifying.

In preparation for the hearing, the Commission compiled an Indexed File, which contains all documents agreed upon by the parties as evidence to be relied upon at the hearing. These documents are numbered for ease of reference by the parties and the Panel. Attached to these reasons and marked as Schedule “A” is a copy of the Indexed File Table of Contents.

PRELIMINARY EVIDENTIARY ISSUES

MPIC request to include “collateral fact” material

The Appellant was self-represented at the hearing before the Commission. She had previously been represented by representatives from the Claimant Adviser Office (“CAO”) and (due to a subsequent conflict at CAO) the Worker Advisor Office (“WAO”). During pre-hearing Case Conference proceedings, her representatives from both the CAO and WAO had argued against MPIC’s request to include certain documents into the Indexed File of evidence.

The parties agreed that they would make submissions before the Commission on this issue, at the commencement of the hearing. The material objected to was, as follows:

1. Manitoba court documents showing a December 20, 2011 stay of proceedings of six charges against the Appellant pursuant to Section 334(b) [2 counts of theft under $5,000]; Section 367 [2 counts of forging a company cheque]; and Section 368(1)(a) [2 counts of uttering a forged document];
2. June 20, 2016 Social Services Appeal Board (“SAAB”) Reasons for Decision, which determined that the Appellant and her common law partner must repay an income assistance overpayment of $15,296.19, because they misled the program into believing they were not living common law.

3. Appellant's Income Tax Records received from Revenue Canada Agency by MPIC Special Investigation Unit pursuant to its request for records in relation to its fraud investigation.

When the hearing commenced, the Commission explained this preliminary issue to the Appellant about which she said she was aware. The Commission invited MPIC Counsel to proceed with his argument for allowing the material. MPIC Counsel submitted that credibility was an important part of this case. He introduced, in general, the meaning and purpose of the collateral facts rule of evidence. Part-way through his submissions, the Appellant interjected to state that she did not object to any of the previously disputed material being admitted at the hearing.

The Chair reviewed each of the documents with the Appellant and reminded her that her previous representatives argued that their prejudicial effect outweighed the value they would add to proving MPIC's case, and objected to the material being allowed.

The Appellant responded that when previously represented she was "not in a good place", but now she was stronger and able to address the contents. She understood that the Panel was familiar with the material and she wanted to explain the documents so that the Panel was not "left with a bad impression." The Chair explained that while the Panel was aware of the general contents, the material had not been fully read, as the documents were not part of the evidence. The Panel was going to decide whether to admit them. The Appellant responded that, nonetheless, she wanted to talk about the documents.

MPIC Counsel noted that the Appellant was representing herself and may not fully understand the prejudicial nature of the documents. The Appellant would obviously be

cross-examined on the contents of the documents. The Appellant replied that she did understand the situation. She pointed out that this was the first time the Panel was seeing her. She said that she had prior mental health issues and felt she had already been pre-judged and prejudiced. However, she said she now had control over her emotions and it was important that everyone hear from her about the documents. She reiterated that she understood the issue.

Disposition on issue of collateral fact material

The Panel considered the submissions of MPIC Counsel, the nature of the collateral fact material and the Appellant's assertions that she understood the issue and wanted to testify about the collateral fact material.

The Panel held that the material may be put to the Appellant during cross-examination for the purpose of impeaching any prior inconsistent statements by the Appellant. MPIC Counsel may then revisit his request to have select documents entered into evidence.

Appellant's late filed material

On March 2, 2022 (seven days before the start of the hearing), the Appellant emailed 39 additional documents to the Commission and requested they be included in the Indexed File. The Panel asked the Appellant to explain why she filed the documents outside of the 30-day filing deadline.

The Appellant apologized for the late filing and stated that she had gone to mediations where they have a 7-day filing deadline. She acknowledged her error but said she is not a

lawyer, and the documents were relevant to her case. She had only recently reviewed her file and realized some documents and emails were missing.

MPIC Counsel did not outright object to the inclusion of the documents. He noted that some were clearly irrelevant. Nonetheless, he had no objection to some dictionary definitions or the Manitoba Court of Appeal decision of [text deleted] *v. MPIC*. The Panel adjourned to consider the Appellant's late-filed material.

Disposition on the Appellant's late-filed material

The Panel acknowledged the Appellant's comments that she is a busy mom and she apologized for the delay. However, this is not the Appellant's first hearing before the Commission. Further, she has had a copy of the complete Indexed File since approximately February 2021 and raised no concern about missing documents. The July 13, 2021 Notice of Hearing confirmed that the parties had advised the Commission that they had provided all written material relevant to the appeal. It contains a clear statement that new documentary evidence must normally be filed at least 30 days before the hearing thereby giving the other party time to study and if necessary, respond to it. This Notice of Hearing was sent eight months prior to the commencement date.

Finally, the Panel's review of the new documents revealed material that included internet searches of medications; medical notes (one unsigned and without letterhead) that post-dated the IRD; an internet search job description from an unrelated employer; and, a newspaper article. Some emails and receipt documents were already included in the Indexed File.

The Panel found that the Appellant had ample time to review the Indexed File of documents and ample notice of the Commission's rule concerning the deadline for filing documentary evidence. The Panel did not find the Appellant's explanation for the late filing to be reasonable, under the circumstances. The Panel denied the Appellant's request to admit the late-filed material.

EVIDENCE

Appellant direct testimony

The Appellant explained that on January 9, 2010 she was driving in [text deleted] when a car failed to yield and forced the Appellant to swerve onto the median. The Appellant's car was struck on the passenger side where the Appellant's roommate and sister (along with her newborn baby) were sitting. The Appellant said that her foot slammed the brake and hit the car floor.

The Appellant said that the primary focus of her injuries involved sore ribs, back and neck. She attended physiotherapy and "developed a secondary ankle injury." She took multiple medications, wore a 'Robo' boot, took cortisone shots and started a gradual return to work.

At the time of the Jan 2010 MVA, she said that she was working as a [text deleted]. Her specific client was a [text deleted]. He attended a full-time school program except for those times he was suspended for inappropriate behaviour. Her work hours with this client had always varied.

The Appellant said her employer could not accommodate anything but full capacity duties. She started a gradual return to work ("GRTW") where she would pick up "casual shifts" with her preference being early mornings. During this GRTW she continued to see her doctor and attend for physiotherapy.

The Appellant was involved in her second MVA on November 8, 2011. She explained that she was driving home from a doctor's appointment in [text deleted] when she hit a deer, ten kilometers from her residence. Somewhat tearfully, she said that she could not process "the shame of killing the deer." This collision "shattered" her life, and the grief from killing the deer was "really overwhelming." It was dark and cold, and the vehicle had no power. The deer needed to be euthanized.

Her "partner" (who attended the hearing with her) was travelling with her, as well as their two large dogs. A passerby called the [police]. They were unable to get a ride home because of the two large dogs and so elected to walk. The Appellant described this as "a really bad night that took me many years to accept and digest" including "a lot of mental health struggles from it."

The Appellant said that she was diagnosed with concussion; she had trouble sleeping, and had a lot of symptoms including exhaustion, lack of sleep, anxiety and stress. She explained that she had to stop for breaks when driving between [text deleted] and her residence. She was on multiple medications. She had to be strategic about getting rides into the city to see her adjuster. While driving on the highways, she would imagine seeing a deer and slam on the brakes, but nothing was there.

She testified that driving in the city was easier and “way different” in relation to her headaches and concentration issues. She noted the numerous emails, phone calls and meetings that are contained in the Indexed File as evidence of her highway versus city driving issues.

The Appellant explained that the tax information requested by MPIC became an issue. She said that because her [text deleted] work is “self-administered” she would record her hours “and write a receipt.” The Appellant said that she and her employer both kept records and, at the end of the year, the Appellant gave her records to her employer. Then, “she would claim on her taxes and I claimed on my taxes.”

The Appellant said that, because she was on a GRTW, MPIC requested she provide pay stubs in order to calculate how much IRI benefit it would pay as a ‘top-up’ to her earnings. She received advice about the CRA “online pay calculator”. After discussion with her adjuster about MPIC’s requirement for documented hours and days worked, the Appellant testified that she used the online calculator and simply handwrote on this document how many hours and on what dates she worked. The Appellant reiterated that because of her situation and the fact that she liked working mornings, “we kind of fit me in”.

The Appellant spoke of feeling ashamed and judged about her injuries. She referred to a November 12, 2010 MPIC file note, which records a discussion about her weight. The file note says that the Appellant spoke of her doctor’s comment that “being overweight was prolonging her recovery.” The Appellant insisted that it was the Case Manager who commented about her weight, not her doctor. She said that she was embarrassed about

being “put in a neck brace”, which she only wore “when driving and walking outside” or felt she “might be in a situation where I might jar it. It was a precaution.”

The Appellant pointed out that the documentation in the Indexed File confirmed that she did not wear the brace all the time. She referred to the surveillance videos saying, as follows:

> So, when they have video of me in the city, I’m still very limited in my driving, but if you break it down, I’m only driving for certain amounts and taking a break.

The Appellant explained that she was the only driver and she could not drive while taking her prescription medication. She relied on her sister or her father to drive to [text deleted] in one vehicle to pick her up. One family member would then drive back to the city in her car, and the Appellant would travel with the other family member in their vehicle. This way she had her vehicle in the city.

She testified that it was the highway driving that was the problem. She said her intense focus during the highway drive caused her to have headaches. She had anxiety about hitting wildlife which led to the following situation:

> We often started the drive and had to turn around and come back to the city. They [meaning the surveillance] don’t get the part of me freaking out and having to come back to the city.

The Appellant explained that her doctor and physiotherapist recommended water therapy treatment, which took the weight off of her ankle and back. Therefore, when she came to the city, she stayed in a hotel with a pool. Alluding to the video surveillance, the Appellant said she could move in the water. However, it was in the following hour that she “would

stiffen up". Again alluding to the surveillance video, she said that the only time she could play with her nephew was in the pool, because he too was weightless.

The Appellant testified about her medications, saying that some of the evidence was in fact "detailing the breakdown of my medication." She said that she was "not allowed to drive" while taking cyclobenzaprine, which she described as a "heavy duty muscle relaxer". In response to a Panel member question asking how she knew this, or who said she was not allowed, the Appellant replied, "It comes with the print-out of the medications. My doctor said when I was on anxiety meds, I should not drive on them." The Appellant said that when she was on medications, she was "able to go out a little bit" but the medications did not take away the root problem, which she understood from her doctor to be a pinched nerve or a concussion.

The Appellant again spoke of how embarrassed and ashamed she felt over hitting the deer, and she interpreted comments from her Case Manager as "everyone judging the situation." She described how, after her PIPP benefits were terminated she got worse and worse, and went on disability. She said that years after the MVAs and speaking with a psychiatrist, she understood that she was experiencing grief over the death of the deer.

The Appellant referred to her July 20, 2010 letter in which she advised her Case Manager that swimming was helping her condition. She also referred to the November 12, 2010 MPIC file note in which the Case Manager told the Appellant that pain should not preclude her from working. In response to that comment, the Appellant reviewed [text deleted]'s (Sports Medicine, [clinic]) November 3, 2010 medical report that documented, among

other things, her right ankle pain and “chronic lower back pain which sometimes becomes aggravated.” She referred to other documents in the Indexed File that showed her conversation with her Case Manager about her GRTW 3 days per week at 3-4 hours per day. This was confirmed by her doctor’s note. She spoke of her follow-up discussion with the Case Manager on March 2, 2011 advising that she had increased her work to 5 days per week.

The Appellant referred to her doctor’s report dated March 9, 2011 that confirmed the Appellant’s concern about infection from a cortisone injection, the doctor’s prescription for a stabilizing right ankle brace, and a walking boot to be used as needed outside, but which she took off “most of the time”. She also referred to her doctor’s report dated September 29, 2011 to show the chronic swelling in her right ankle, the steroid injection treatment, and how she “was trying to keep on top of it with different solutions and it just wasn’t working.”

She referred to an MPIC File Note dated November 24, 2011 in which she reported to her Case Manager that she experienced extreme head aches where <u>sometimes</u> (emphasized by the Appellant) noise and light was overwhelming. She reported having trouble sleeping, a lack of eye focus and blurriness. Her parents had taken time off work to check on her and bring groceries.

Although the file note stated that her father was “going to spend the night”, the Appellant recalled that he did not in fact spend the night, but arrived at her residence with a friend so that her father could drive her back to the city while the friend drove her car. The Appellant stressed that she had extreme headaches but they were “not all the time”, and

“things change from moment to moment.” Her father apparently wanted her to see a doctor and not stay where she was isolated.

The Appellant referred to an email exchange with her Case Manager on January 24, 2012 about her Level of Function (LOF) form completed January 6, 2012. The Appellant testified that when she went to physio, they ask generic questions, so she thought that was how she should complete the LOF form. She explained that if her LOF indicated a limitation, that meant she was not doing that activity in physio. She continued, saying, “I knew it was my daily LOF, but I was fluctuating so much.” She said that she thought the “pushing” category meant opening a door, not pushing a shopping cart, and this was never explained to her. In response to the Chair’s question about whether she understood the language on the LOF, the Appellant replied that she thought the LOF asked “what I was feeling at the moment”, and thought “the form would be compared more with physio reports and if they were dissatisfied, they would talk to me.”

The Appellant testified that she did not realize the importance of the LOF forms and “would have been a lot more thorough.” She pointed out that of the nine LOF forms, six followed the first MVA and three followed the second MVA. She said MPI took those three LOF forms and over a 3-year span, summarized the information “as one.” She pointed out that her care fluctuated in terms of symptoms and challenges and she did not like that her LOF forms were “grouped together.” She explained she was progressing, but had set backs and delays.

The Appellant referred to the January 25, 2012 surveillance notes and explained that her sister and another individual drove to her rural residence to pick her up and drive her to [text deleted]. The Appellant's vehicle was parked in the [insurance agency] parking lot while her sister dropped the Appellant at the MPIC office for a quick meeting with her Case Manager. The Appellant said that she does not like driving or parking downtown so it was convenient for her sister to drop her at, and pick her up from, the meeting. She agreed with the surveillance notes that she then drove her vehicle in the city for approximately the next three hours, but noted that her activity was confined to using a pay phone.

She confirmed that she and her partner, [text deleted], stayed at a motel and were joined by her sister at approximately 6:30 p.m. The Appellant said, as follows:

> I'm on quite a bit of medication from time to time. I have to vary my medication. I was on cyclobenzaprine. My sister is a registered massage therapist and she would work on me.

She acknowledged that the surveillance notes report her activity in the motel pool. The Appellant said, "I'm not having this grand old time. I'm only in for 17 minutes and I don't leave the hotel for the rest of the night."

Referring to the surveillance notes of the following day (January 26, 2012) the Appellant confirmed that she left the motel to attend physio. The Appellant drove throughout the day from approximately 11:45 a.m. to 5:45 p.m. (with a two-hour return to the motel from approximately 1:30 – 3:30 p.m.) and she noted the short periods of time she drove without breaks (i.e., 13 minutes, 16 minutes, 20 minutes and 23 minutes). She explained that she

is only in the city to attend doctor's appointments. Although she is driving the vehicle she emphasized that she is "taking breaks and not doing anything after."

The January 26, 2012 surveillance continued into the evening, which included the Appellant in the pool, driving to and shopping in [store], driving and shopping in [grocery store], driving to and leaving the motel, driving to and then returning from her grandmother's residence. This time frame is between approximately 6:30 p.m. until 12:30 a.m. (Jan. 27th). The Appellant said she was in the pool for 16 minutes, explaining that she was always encouraged to swim. She emphasized the timing of her driving between the above stops as 7 minutes and 9 minutes. Although she noted the various stops, the Appellant concluded by saying, "So I went to the doctor, physio and a visit with my grandma. Nothing else."

The Appellant referred to the January 27, 2012 surveillance notes and described how often she left the vehicle compared to her partner [text deleted]. She particularly noted the surveillance note for 1552 hours (3:52 p.m.) which stated, as follows:

> We set up our hidden video camcorder in the parking lot and the subject is seen entering [grocery store] pushing a shopping cart, walking through the store, making selections from the meat department, the dairy department, the vegetable department, the bakery and the frozen foods isle. The subject is occasionally out of our view in order not to raise any suspicion and lasts a total of 42 minutes. The subject returns to the vegetable department and we exit the store in order not to raise any suspicion. We wait outside for the subject to exit.

With reference to this surveillance note, the Appellant testified, as follows:

> …[store]'s groceries, I stay in the vehicle. [grocery store], I go in. That's the only time I go in. I drove 32 minutes with a couple of stops; one hour and 22 minutes. My anxiety was really bad that day. I really thought somebody was following me. I didn't know it was MPI. I just thought someone was following. You'll note, page 18, 1552. I went to the manager of the store that day…

The Chair asked the Appellant to clarify whether it was her testimony that she understood the surveillance note (above) to mean the investigators thought she was suspicious of them? The Appellant said “yes” she read it this way, and in fact she was suspicious. She continued saying, as follows:

> I assume they knew I was suspicious. I went back to the vegetable department because I thought I was being watched and that was getting my anxiety going.

At 1756 hours (5:56 p.m.), the notes stated that surveillance ended when she left [text deleted] travelling northbound on [highway]. The Appellant said, “That’s where I have my anxiety. At [town], that’s where the highway gets narrow.” The Chair asked for clarification about what she meant by ‘narrow’, and the Appellant responded saying it meant the highway was no longer divided by a median. The Chair asked if she meant that shortly after passing [town #2], MB (not [town]) the highway goes from divided to two-way, the Appellant replied, “Yes, that’s when it gets really bad”.

The Appellant reviewed the surveillance notes of March 14, 2012, emphasizing that she only needed rides for highway travel. Otherwise, she took breaks, or would rely on medications such as Robax or Tylenol 3. She referred to the March 24, 2012 report of her family physician [text deleted], and emphasized his comment that she, “definitely appeared to be making steadily good progress” and was “able to return to work in some capacity.” She said this showed that she was making improvement and explained the surveillance that showed she was “able to be driving a little bit at that time.”

The Appellant referred to the April 10, 2012 "Physical Demands Analysis" ("PDA") completed by occupational therapist, [text deleted], which showed the Appellant's reported "Work Hours" as, Monday – Friday from 8:00 a.m. – 3:00 or 4:00 p.m.; Friday 4:00 p.m. – Sunday eve (overnights); as well as Tuesday, Wednesday and weekends. The Appellant read the statements about her client needing 24-hour care. She testified that her client is "a really early riser: 4, 5, 6 a.m." and that this was her favourite time to provide her [text deleted] services. She said that if the client was in one of his rehab day programs, he would need to be bathed in preparation for his attendance. She referred to the various activities listed in the PDA, which she attended with the client.

In response to questions from a Panel member to clarify her start time, the Appellant said that she arrived in the middle of the night before 4 a.m. to accommodate her need for light duties. She said, "I've gone in the middle of the night but then gone from 7 a.m. I wanted you to see how his care varied…"

The Appellant referred to the November 14, 2011 Report of Investigation/Discussion, which documents the Appellant's meeting with her Case Manager. This Discussion records the Appellant saying "she just got off work at 12:30." The Appellant denied making that comment and testified that she would have said "…I worked that morning."

The Appellant reviewed another portion of the Discussion that stated, as follows:

> … She said that this morning for example, she had to bathe the gentleman she looks after and she said that he sometimes goes to the washroom in the bath tub and that day he had done that so she had to bend over in the tub to clean the clogged drain and she was sore doing [sic] but was able to do it…

The Appellant testified that she never bathed her client between 9 a.m. and 12:30 p.m. The reference to '12:30' must be her Case Manager's assumption, likely based upon prior conversations. The Appellant said the bath would have been early morning to ensure her client was bathed, fed, clothed and downstairs by 7 a.m. to attend a rehab program.

The Report/Discussion concluded with her Case Manager's request that she provide her 2010 Income Tax and Notice of Assessment as well as pay stubs that set out "days and hours that she worked for top up IRI to be paid." The Appellant confirmed the accuracy of this statement.

The Appellant read portions of the November 17, 2011 MPIC File Note, comprised of her email to her Case Manager. In particular, the email stated the Appellant had taken the rest of the week off work; reminded the Case Manager of their meeting on November 14th and the Appellant's complaints of headaches explaining that she had "a small concussion from the accident". The Appellant testified that she was very embarrassed after the second MVA and wanted to be okay, but was hampered by her headaches, lack of sleep and nightmares. The Appellant read the portion of her email which stated, as follows:

> … I know that my back was really hurting after my shift on Monday and I had to clean the tub at my clients [sic] place…. I met with you shortly after that and was complaining of my back hurting …

The Appellant testified that this statement simply meant that she had worked that morning. In response to the November 14, 2011 surveillance notes, which stated the Appellant left a [text deleted] residence at approximately 11:30 a.m., and eventually travelled to the MPIC office for her 1:30 p.m. meeting, the Appellant reiterated that she had already been at work earlier that morning, and would have been done by the time she went to her meeting.

The Appellant referred to MPIC's Special Investigations Unit, Bodily Injury Investigation Report ("SIU Report"), dated October 29, 2012, which stated that she worked from 9:30 to 12:30 p.m. on November 14, 2011. The Appellant said, "I believe I worked earlier than that and they say it's impossible, assuming that I worked from 9:30 to 12:30."

The Appellant denied the statement in the SIU Report that she had a "fear" of driving downtown. She said that she "did not like driving downtown." In response to the SIU Report about the accuracy of her Income Tax forms and Notices of Assessment, the Appellant said that she was "very confused about the tax information" and never hesitated to provide an authorization to allow MPIC to directly obtain her tax records.

The SIU Report stated that the Appellant's client was in a program "Monday to Friday, from morning to night [and the employer] no longer required full time care for [the client]". The Appellant said this was incorrect and the programs run from Monday to Friday during school hours. A shuttle bus would pick up the client at 7:15 a.m., which is why she had to have him ready for 7:00 a.m.

The Appellant reviewed portions of the SIU Report that stated her employer confirmed the Appellant had not regularly worked since the first MVA, but only came in on occasion when needed; her employer reported that the Appellant last worked for a couple of weeks in the summer of 2012 and the Appellant was paid in cash; her employer later advised the investigator by email that the Appellant had in fact worked 366 hours in 2011 and did not work at all in 2012; and, the employer's daughter had started to provide pay stubs to the Appellant, but this was stopped. The investigator suspected the employer's email was the result of being contacted by the Appellant.

In explaining the emails between her employer and the investigation unit, the Appellant said that the SIU Report allegation that she had forged documents was wrong, and the email exchange showed this. She said, “One was talking about T4 slips and one was talking about pay stubs. It was frustrating to see [the investigator’s] report like that.”

In response to the allegations about her tax filings, the Appellant said she is not an accountant and she made an error. She did not know how to claim the IRI income on her taxes. She said she “didn’t have money to pay [bank], so they didn’t give me my return.” She underwent three tax reviews and received three Notices of Assessment. She referred to an email sent to her Case Manager that showed she followed up on providing a notice of reassessment. The Appellant said that she did not knowingly provide false information; she still does not really understand how it works.

The Appellant reiterated that she gave her employer “receipts” at the end of the year saying, “I claim that and she claims that.” If hours were missed, “it was just an error, like on the LOF form.” She said she was trying to be helpful and did not send any false information to MPI. She provided pay stubs until her “boss realized how much extra work it would be and reimbursed me the deductions.” When the MPI investigator asked for T4s it was a clerical error and nothing more.

The Appellant then testified about the circumstances giving rise to her 2009 criminal charges for fraud. She had opened a [business] with two other individuals who stopped paying her commissions. She was going to leave and start her own business and it became a “mean girl” situation over business clients. She testified, as follows:

> I left. It was very amicable. They called the police and said I forged cheques. This was absolutely not true. We entered into a stay of proceedings. I kept the money because I knew they were up to tricks.

The Chair reminded the Appellant that the documents pertaining to collateral issues were not in evidence and she may consider waiting for specific questions from MPIC Counsel. The Appellant stated that she was concerned about being able to give a full answer to explain those circumstances, and reiterated her wish to do so. The Chair confirmed that she would be allowed to fully respond to questions from MPIC Counsel. The Appellant understood and concluded her testimony.

Appellant cross-examination testimony

In response to questions, the Appellant confirmed that her role as a [text deleted]. Her particular client at the time of her MVAs was in his [text deleted]. She had known [the client]'s family for a long time. She transitioned from [text deleted] worker in 2009 to her role with [text deleted] in approximately 2010. Prior to her work in [text deleted] and with [text deleted] she confirmed she worked as a [text deleted] with two other women who were massage therapists.

The Appellant confirmed that at the time of her Jan 2010 MVA she lived in [text deleted], and in approximately 2011, before the Nov 2011 MVA, she moved to [text deleted], MB. Other than sometimes staying with her sister in [text deleted], she drove between [text deleted] and [text deleted] for her [work]. Her partner did not drive at this time, either due to a foot injury or no longer holding a valid licence.

In response to questions, the Appellant confirmed that she was paid by her employer (hereinafter "[text deleted]") who is also [client]'s mother. [Client]'s sister (hereinafter "[text deleted]") also provided care and helped manage [text deleted] workers, acting as manager when CH was away. The Appellant's partner (hereinafter "[text deleted]") is also [client]'s brother. The Appellant explained that "our families are really connected".

The Appellant said that she received part of her income directly from [client's mother] who received funds from [text deleted] through the Manitoba Government. The Appellant and other [text deleted] workers provided [the mother] with receipts for their income. She explained that [the mother] paid cash at the end of the week based upon the Appellant's recorded hours of work. The Appellant said, "We didn't keep that after she paid us" and further stated, "I didn't keep those, I probably left them at her place". When asked how she knew what amount to report as income, the Appellant said, "Because I kept yearly notes of my yearly work. I would actually write her a receipt for the whole year." She confirmed that she received nothing from [the mother] about her total income.

MPIC Counsel reviewed the Appellant's Applications for Compensation ("AFC") for both MVAs, as well as her 15-page typed notes and attachments submitted with her January 23, 2013 Application for Review ("AFR"). In response to MPIC Counsel's questions, she did not concede that her memory would have been fresher at the time of typing those notes. She said she had a lot of PTSD, memory and mental health issues, and while she wanted to say that she would support everything in the typed notes, she was very forgetful in that time period.

Counsel referred to the AFR typed notes, particularly the detailed information she provided about each of her 10 LOF forms, as well as her direct testimony that she only reported functioning specific to that day. The Appellant maintained that although she knew the LOF forms were being reviewed by her Case Manager, she did not know the weight placed upon them, otherwise she "would have really taken time and detailed my headaches and, yeah." She admitted that she was told to put in detail and that she should be truthful and accurate. She said, "I honestly thought it was like a physio form and I filled it out as to how I was feeling that day."

MPIC Counsel pointed out examples in the LOF forms in which the Appellant described her functioning in terms of "some days more than others", which contradicts her testimony that she only described that day. The Appellant responded, "Yes, but I'm thinking and summarizing how I'm feeling at that moment, but it does spill out to other times. That's just how I talk." Counsel referred to her January 24, 2012 LOF form, which checked off three boxes of driving limitations and stated that her driving depended on the day, the severity of her headaches, and whether she could take breaks. The Appellant agreed with this but added that these conditions overlapped with her meds and how she was feeling.

MPIC Counsel questioned the Appellant about the Payroll Deductions Online Calculator ("PDOC") documents that she provided to her Case Manager as evidence of her earnings. [Note: the PDOC documents are alternately referred to as "pay stubs"] The Appellant said that either she or [client's sister] completed the PDOC and [the mother] knew about them. The Appellant confirmed that she created the PDOC weekly to provide to her Case Manager so that MPI knew how to adjust her IRI benefit. The Appellant explained that she

hand wrote the days and hours worked, as requested by her Case Manager. In particular, she confirmed her November 14, 2011 handwritten notes, as follows:

> MONDAY NOV. 14, 2011
> ↳ 3 HOURS WORKED.
> NOTE↳WAS HURTING FROM ACCIDENT + HAD REALLY BAD HEAD ACHE BUT PULLED THROUGH MY SHIFT.

Counsel then questioned the Appellant about the November 14, 2011, 1:30 p.m. Case Manager's Meeting notes, which stated the Appellant "just got off work at 12:30". The Appellant testified, "I don't know why I would have said that. I don't remember, it was so long ago. This isn't my note and I dispute that." After further questioning, she added, "Maybe she just assumed the hours. I can't say that I got off at 12:30."

When referred to the November 14, 2011, 11:30 surveillance note that stated she drove from a [text deleted] residence to [address] at 11:43 a.m., the Appellant agreed that she could not have gotten off work at 12:30 p.m. if she was observed leaving [text deleted] at 11:30 a.m. She added, as follows:

> But I probably had already gone home and come back because I would have come back earlier. And now I recall I picked somebody up at that apartment…

And further:

> I dispute that [getting off work at 12:30]. I might have even said I just came from there but not meaning I was coming from work. Just general.

MPIC Counsel questioned the Appellant about the SIU Report and her meeting with the investigator on September 28, 2012 wherein he asked her about the discrepancies between the November 14, 2011 Case Manager note and the surveillance. The SIU Report stated the Appellant's explanation was that "she might have got the date wrong."

Counsel suggested that on September 28, 2012 she initialled the PDOC to confirm the correct dates. The Appellant replied her initials were simply to confirm the handwriting was hers. However, she told the investigator that the date "may have been in error but I was pretty sure that was the day I worked."

Counsel noted that she did not suggest to the investigator that she may have worked earlier that morning. The Appellant responded saying, "my PTSD, and these investigators were very aggressive", so she "wasn't sure at the time". She said she was dealing with a lot, and so could not remember.

The SIU Report noted that the Appellant was confronted with the apparent inconsistency between the surveillance and the Case Manager note, and counsel asked why she did not mention to the investigators that she worked very early on November 14th to bathe her client. The Appellant stumbled over her answer, threw her hands up and said, "I can't speculate. I don't know what happened that day!"

Counsel referred to the Case Manager decision that discontinued her IRI based upon, among other reasons, the discrepancy between the November 14th meeting notes and surveillance. The Appellant agreed that in her AFR, she did not explain the bathing routine or having to clean the tub as she related to her Case Manager on November 14th. She repeated that she was going off of her notes, and it was very stressful.

Counsel referred to a January 5, 2012 unsigned letter with [client's sister]'s name at the bottom, which stated, in part, as follows:

> She suffered a bad concussion and some other minor injuries but still tried to come into work on November 14, 2011 when she was sent home due to a bad head ache. She has not been able to resume her duties since.

The Appellant agreed that this letter was the only information from her employer confirming she attended work on November 14, 2011. The Appellant added that the February 2013 emails from CH could not confirm her November 14th employment because, although [the sister] had records in January 2012, "after April, she wouldn't have had to keep records any more." She confirmed that neither [the mother] or [the sister] were scheduled to testify. She said that she "absolutely" would have called her employer as a witness if she had known she could.

Counsel pointed out the discrepancy between the Appellant's written comment that she "pulled through" her shift, and the comment in [the sister]'s letter that she was "sent home" due to a bad headache, and asked which version was correct. The Appellant responded, "Both of them…I was scheduled to work 3-4 hours and I feel I pushed through my shift. But maybe she sent me home early, I'm not sure."

Criminal Court Proceedings

Counsel questioned the Appellant about the 2011 criminal court proceedings dealing with forged cheques. The Appellant insisted that she was acquitted with a stay of proceedings. The Appellant consented to entering the Information and Disposition documents, which the Panel marked as Exhibit 1. The Information related to the Appellant's 2009 [text deleted] business. She was charged with two counts of theft over five thousand dollars, two charges of forgery and two charges of uttering a forged document. The Appellant denied that she stole cheques from her colleagues because she was owed the money.

She testified she agreed to repay the funds to dispose of the charges. A stay of proceedings was entered for all six charges.

Social Assistance Appeal Board ("SAAB")

MPIC counsel questioned the Appellant about a SAAB decision and reasons dated June 20, 2016. The Appellant responded that at the time of the SAAB decision she was "single and had a roommate". The Appellant agreed that the SAAB hearing involved her and her current common law partner, [text deleted], who was present at this hearing. She reaffirmed that at the time of the SAAB hearing, she was not in an intimate relationship with [text deleted].

Based upon documentary evidence and landlord information, the SAAB concluded that the Appellant and [text deleted] were residing in a conjugal, common law relationship contrary to the Appellant's Application which stated that they were "roommates". In response to MPIC Counsel's question, the Appellant reiterated that she was not in a sexual relationship with [text deleted] and she had done nothing wrong.

When offered the opportunity to reconcile for the Panel the credibility concerns arising from the criminal court and SAAB proceedings with the credibility concerns raised by MPIC in this appeal, the Appellant responded that her former business colleagues were out to get her and MPIC investigators were "really aggressive" and made things look bad. She said the SAAB decision made her and [text deleted] re-evaluate their relationship, which made their life better. The Appellant consented to the SAAB reasons being admitted as Exhibit 2.

Reported income / Tax Records

Counsel referred to portions of the SIU Report that stated [the mother] advised that the Appellant worked a total of 366 hours in 2011. Counsel suggested that the 2011 PDOC statements provided by the Appellant in fact totalled 389 hours and asked if the Appellant and [the mother] used the same documents to calculate the 2011 hours. The Appellant responded that she only knew her own total came "off the receipts." She reaffirmed that, "she tells me the hours and I do the receipt." At Counsel's request, the Appellant totalled the reported hours from her PDOC statements and agreed that the hours for 2011 totalled 389 hours. The Appellant referred to the discrepancy in hours as "an honest clerical error."

Counsel referred to portions of the SIU Report, as follows:

> The 2010 and 2011 completed Income tax forms MPI has on file were not submitted to RCA and the 2 notice of assessments [sic] on file were not supplied by RCA. They have completely different income tax forms submitted by the claimant.

The SIU Report concluded that the Appellant had forged the tax forms provided to MPI. The Appellant responded saying she had multiple things happening throughout that year, she's not an accountant and did not understand the assessments and re-assessments.

The Appellant submitted copies of her Notices of Assessment and Re-Assessment with her AFR, to which Counsel referred. The Notice of Re-Assessment dated November 13, 2012 showed the Line 150 Total Income amount "on previous assessment" as "$29,360" and the "revised amount" as 0 (zero). Counsel asked if the Appellant was saying her 2011

income was revised to zero. She replied, “No…I already had a zero and then it went back to twenty-nine thousand, and then it went to five thousand.”

The Appellant explained that she may not have kept MPI updated with her changing tax information because she was dealing with her aunt and uncle being killed but nonetheless promised to get her taxes done as soon as possible. She agreed that she was aware that she must report clear information for tax purposes, but said the changing incomes on her tax returns were “clerical errors.” She consented to a one-page document titled “Selective difference between Tax Returns” (2010 and 2011) being admitted as Exhibit 3.

Medical records and level of function

A February 7, 2012 report from neurologist [text deleted] stated that the Appellant reported neck and back pain; really bad headaches; and, blurred vision when driving or reading. He could not find evidence of an organic neurological disorder but recommended she discontinue all medications because her headaches may be codeine induced. Counsel reminded the Appellant of her testimony that she could not drive because of headaches and blurred vision and asked if she complied with the doctor’s recommendation to stop the medication. The Appellant provided a long, unresponsive answer and counsel repeated the question about whether she stopped, as recommended. She replied, “no” but then qualified her answer saying she did not know what medications she stopped that day but assumed she followed the doctor’s recommendations.

In response to questions, the Appellant agreed that in approximately June of 2010, her right ankle swelled more during her physiotherapy. She said her ankle was getting better and she was “taping it”. However, when she slammed her foot on the brake during the

Nov 2011 MVA, she aggravated her ankle problem, which was not fully healed. The Appellant also agreed with information in six emails exchanged between the Appellant and her Case Manager, between May 2012 and November 2012, which stated she continued to suffer and struggle daily with the same level of headache pain.

When asked to reconcile the low level of function reported on her February 27, 2012 LOF form, with her doctor's report dated March 24, 2012 (in which he stated the Appellant was making slow but steady progress and could return to work), the Appellant responded that maybe she was having a really bad day and that her care fluctuated. She said it related back to her "PTSD" and learning how to deal with her stress. When the Chair asked if her testimony meant she had a diagnosis of PTSD in 2012, the Appellant replied she did not, but only knew "it was part of my concussion, and the sleep, stress and anxiety."

LOF and Surveillance Video: Wednesday, January 25 – Friday, January 27, 2012

Counsel reviewed the Appellant's testimony in which she had stated that she did not like driving and parking downtown. The Appellant responded, "Well, it varies…I needed to have those breaks. It was convenient and allowed me to do more." She reaffirmed that her LOF descriptions for each activity focused on how she felt the day she completed the form. She did not concede that surveillance video would correspond with her LOF form close in date, because her functioning was dependent on what medication she was taking, or how much stress and anxiety she was experiencing in any given moment. She said that she filled out the LOF form "…as to what I was feeling at the time, but also generally. I filled them out to say that I had pain and not to say what I could do." She said that even if the video and completion date of a LOF form were "an hour apart" it would not be fair to compare them.

January 25, 2012 surveillance video

Counsel compared the January 24, 2012 LOF form with surveillance video dated January 25, 2012. The LOF form stated the Appellant's walking was limited to 15-30 minutes because her right ankle caused her to limp, and standing was limited to 15-30 minutes. She could perform a "partial squat" but it "hurt to get back up from squatting or bending." Counsel reviewed video that showed the Appellant walking without a limp and squatting in front of shelves at [store]. The Appellant insisted that she was limping and suggested that she was able to squat because she was "so drugged up."

The January 24th LOF stated that the Appellant was limited to pushing and pulling between 0 – 10 lbs. The Appellant commented on the form that she had only tried pushing or pulling a door on a building and that her back, neck and shoulders were "too bad for anything like this." The video showed the Appellant pushing a luggage cart stacked with luggage and shortly thereafter, walking briskly while carrying two bags. The Appellant responded saying, "I would never have thought of pulling or pushing a luggage cart." She did not deny that she was walking briskly with bags but said, "Maybe I was cold, maybe I was in pain, I have no clue."

Counsel reviewed later January 25th video showing the Appellant at a motel pool in the evening with her sister and [age] nephew. The Appellant agreed she lifted her [age] nephew out of the pool and 'dunked' him in and out of the pool. She variously explained, "I was on a lot of medication here…when you have a child you get this strength, I was drugged up…I can play with him and smile through the pain…maybe I was cleaning his feet off."

January 26, 2012 surveillance video

Video dated January 26, 2012 again showed the Appellant in the pool with her nephew at approximately 6:45 p.m. She is seen crawling on the floor area with her nephew, lifting her nephew out of the pool, then jumping into the hot tub to catch her nephew when he jumped in.

At 8:15 p.m., the video showed the Appellant leaving the motel and driving to a [text deleted] store. Counsel reminded the Appellant of her direct testimony in which she suggested that after being in the pool she was 'done'. The Appellant replied that she "may have had treatment beforehand." Video showed her variously browsing the aisles; bending over and performing a full squat with both heels off of the floor; and, reaching overhead for items. The Appellant was not limping. She agreed that she did not look to be in pain and explained that she may have been having a good day. She then said that the video showed she was sore when she stood up from the squat, because she shook out her arm, likely due to tingling.

At approximately 9:10 p.m., the Appellant agreed that the video showed her meeting her sister at [store]. She said her mental health was "really in the pits", "everyone was keeping a close eye" on her, and thought her sister 'taped her up' after the pool. The video showed her bending over to pick up a dropped item; squatting to review items on a low shelf; and, pushing a full shopping cart both in the store and out to her vehicle. The Appellant said that her doctor encouraged her to go out. She said the video showed her limping and slowing down because of the pain. The Appellant is seen, variously, bending over to lift a case of soft drinks; fill a cooler with groceries; and, lift the cooler onto the seat in her vehicle. She said, "You can see I'm limping, I think." At approximately 10:45 p.m., the

Appellant drove to her motel, unloaded her purchases onto a luggage cart and pushed it to the motel door.

At approximately 11:00 p.m., the video showed the Appellant driving away and returning to the motel at 12:24 a.m., exiting her vehicle and walking to the front door of the motel. The Appellant said she had gone to visit her grandmother who "fell that night so I went to check on her."

January 27, 2012 surveillance video

Counsel reviewed video January 27, 2012 surveillance starting at 11:00 a.m. The Appellant confirmed that the male individual shown in all of the videos is her common law partner [text deleted], and that they were checking out of the motel. At 1:35 p.m. the Appellant is seen driving with [text deleted] as passenger, and for the next 4 1/2 hours the Appellant drove to [tire shop]; [water store]; a beer vendor; her grandmother's home; [bank]; the [liquor store]; the downtown apartment building at [text deleted]; [market] on [street]; [grocery store]; and, [fast food restaurant]. After driving a total of 52 kms in the city, the Appellant drove northbound out of the city, at 5:56 p.m.

The Appellant exited the vehicle at the [liquor store] and at [grocery store]. When walking in and out of the [liquor store], the Appellant said "That for sure is not a normal walk… you can see I have that slight limp." She said that she purchased groceries for home at [grocery store]. She confirmed this was the surveillance she referred to in her direct in which she felt someone was following her. She reaffirmed, "I noticed someone was following me without anything in their basket and I doubled back." She confirmed that she shopped and pushed her cart without the assistance of [text deleted] explaining, "I often

pushed myself to go in because I needed to do my own personal shopping… I'm not sure where he would have been."

Counsel referred the Appellant to her January 24, 2012 LOF form which stated that she was limited to 15-30 minutes of standing and where she described her difficulty, as follows:

> Really uncomfortable to stand to [sic] long. I get back spasms and my whole back hurts. Not to mention my ankle hurts and I must put all my weight on my left leg.

The Appellant said that she wrote her LOF while in the country, "anticipating how I have been feeling." She further stated that in the city she has had acupuncture, therapy, and lots of things were different from what she said in the LOF form.

The video showed the Appellant standing at the meat counter for almost 15 minutes. She agreed that she was standing with her weight on both legs. She is seen leaning toward the counter with weight on her right foot, she was not leaning on her cart, and agreed that she was not experiencing trouble standing or moving. The Appellant then said, "I was so bad in my mental health that I can't even make a selection. It's so hard to watch…I'm just literally standing there and can't decide."

The video showed the Appellant maintaining a full squat for at least one minute. She bent to pick up an item on a low shelf as well as reached above her head to a high shelf. The Appellant agreed that she did not sit down to rest for at least 42 minutes and was in the store for approximately 1 ½ hours. She agreed that she pushed her full shopping cart to her vehicle, but "with a little bit of a limp". She unloaded items into the van with [text

deleted], rather than sitting down to rest, saying that he probably needed her direction about which items to keep cold.

She agreed that she returned the shopping cart rather than [text deleted] saying, “I’m limping…that’s not my normal gait.” She confirmed the video that next showed her driving to [fast food restaurant], entering the store, returning to the vehicle with drinks, and re-entering the store to pick up food while [text deleted] waited in the vehicle, although she thought she “was limping a little”. She did not dispute the surveillance note calculation that she drove a total of 52 kms before driving northbound out of the city.

LOF and Surveillance video: Tuesday, March 13 & Wednesday, March 14, 2012

MPIC Counsel referred the Appellant to her February 27, 2012 LOF form. She reiterated that she was careful to be accurate and truthful “in the moment.” The LOF form indicated she is limited to 15-30 minutes standing otherwise she gets sharp back pain, and must stand with her weight on her left leg. She checked boxes stating that she was limited to driving 0-30 minutes; 30-60 minutes; and, 1-2 hours. She wrote that she needed to stop and take breaks at around 30-45 minutes otherwise she gets “really bad headaches” and “must wear sunglasses if if [sic] no sun”. The Appellant testified that she took breaks on the highway and had double vision.

She wrote on her LOF form and affirmed in testimony that bending was limited and she could only perform a partial squat because it hurt her back, neck, and shoulders when she stood up. Her LOF stated her “ankle really hurts” when squatting.

She reiterated her understanding that she was supposed to “note even the slightest pain” on the LOF forms. She wrote on the Form that she was not doing overhead lifting because she experienced pain and spasm in her back/neck/shoulders; it was painful to push or pull; and, she could not turn or move her head up or down without it being “very painful”, getting dizzy and getting a “bad, bad headache.” She testified that when her head was down she got “an instant headache”; when she concentrated she got a “bad, bad headache”; and, “had a hard time moving” her neck. She said the “the anxiety and tension really changes throughout.” She confirmed the LOF form comments that said she experienced fear of being in an automobile “sometimes”, explaining that she had “no fear in the city but on the highway.”

Counsel reviewed the Appellant’s March 16, 2012 emails to her Case Manager (and confirmed in her testimony) that she was able to drive but still experienced double vision, and some blurriness and headaches, which sometimes interfered with her driving. She testified that if she took lorazepam medication for her anxiety, she was not allowed to drive. The email stated her left shoulder was sore with a sharp burning pain.

Counsel reviewed the Appellant’s March 28, 2012 emails to her Case Manager and she confirmed in testimony that she reported bad headaches; she was sleeping horribly and was still finding it hard to drive; but was doing her best.

Counsel reviewed video surveillance for March 13, 2012 showing the Appellant walking into [coffee shop] to meet with her occupational therapist. The Appellant agreed she walked with a normal gait, but said she wore sunglasses because of a headache. After the approximately 1 hour and 20 minute meeting, the Appellant exited [coffee shop]. She

said, “I’ve got a little bit of a limp there.” Counsel reviewed video of the Appellant walking in and out or her motel, and bending forward to retrieve something she dropped. The Appellant testified, “This is a good day for me.”

Counsel reminded the Appellant of her March 16th email in which she told her Case Manager that her doctor advised that she take another 6 weeks off from work. He gave her lorazepam because she had “been a little stressed over all of this lately.” The Appellant agreed and testified, “Yeah, my anxiety is really up, I can barely care for myself, and I’m feeling suicidal. My biggest fear going back to work is my cognitive abilities.”

Surveillance video dated March 14, 2012 at 11:30 a.m. showed the Appellant and [text deleted] driving to [gardening centre], where she is seen carrying a pot of flowers one handed; bending to pick up a basket in which she places the plant; and, talking with employees. The Appellant testified that she purchased the flowers for her grandma who suffered a fall.

At 1:50 p.m. and 2:55 p.m. that day, the video showed the Appellant walking downtown. She testified, “I have that limp; that pain I get” and “I’ve got that slight limp again, you can tell it’s my right foot.” When questioned, she maintained that she displayed an abnormal gait, saying “Yes, I have that slight longer step down, but that’s definitely different for me.” At approximately 3:30 p.m. when observed walking into a bank, the Appellant testified, “Again, I’m not fully walking good. I’ve got that slight wobble, I call it. I don’t know – a limp I would call it.” She confirmed that she was able to step over a puddle; enter and exit her vehicle; and, reach overhead to open and close the van hatch back, all without apparent difficulty.

Counsel reviewed video starting at 6:30 p.m., which showed the Appellant driving to, and shopping at, [grocery store] for almost an hour. She is seen walking around and pushing a cart while purchasing some items. The Appellant testified that it looked like she had a headache because she was squinting, and again remarked that it is taking “a little bit longer for my foot to go down.” MPIC Counsel suggested that there was nothing abnormal about her gait to which the Appellant replied, “No, I definitely have an off beat there.”

On more than one occasion during testimony, the Appellant had swayed from side to side when describing her gait, at which point the Chair asked if she was demonstrating for the panel what we should watch for on the video. The Appellant replied, “Yes, but well, maybe. I’m exaggerating. Not as much, just demonstrating."

Counsel noted the comments written on her LOF form stating she “can probably do 20-25 mins [sic] of walking in like a grocery store, etc.” However, she had walked approximately 50 minutes in the video. The Appellant responded that 20-25 minutes was just an estimate and “you tend to lose track of time” when shopping. The video showed her pushing a shopping cart full of groceries to her car and Counsel reminded her of the LOF form which said pushing or pulling 1-10 lbs was painful. The Appellant replied that she was referring to the rowing at physio which hurt her. The Appellant confirmed that after shopping she drove to her grandmother’s residence where she picked up a male individual and at 8:00 p.m., drove northbound out of [text deleted]. She agreed that she had departed her motel at approximately 11:00 a.m. that morning.

MPIC Counsel summarized three days of surveillance in January and March 2012, in which the Appellant was first seen at either 11:00 a.m. or 1:30 p.m. He compared those

times with the November 14, 2011 video which showed the Appellant's first appearance at 11:30 a.m. leaving for her meeting at MPIC, and at which the Appellant disputed she advised her Case Manager that she had just got off work at 12:30 p.m. The Appellant maintained that she would have completed her work for the day saying, "I would have worked overnight, yes." She said there were other surveillance notes that showed her starting her day earlier. Counsel reviewed the surveillance notes for November 15 and 16, 2011 which also noted that the Appellant was first seen at 11:54 a.m. and 11:43 a.m. The Appellant agreed saying she just did not leave the house until that time and would go out later in the day, which was her best time, because she was not sleeping.

January 24, 2012 LOF form

Counsel referred back to the Appellant's January 24, 2012 LOF form which she reaffirmed she completed while in her rural mind set, but "a little bit thinking of what I do in the city." Counsel suggested that the information on the January 24th LOF form was similar to the February 27th LOF. The Appellant agreed but qualified that both forms represent "estimated" information. When asked if the squat, with both heels off the floor, seen in the previous video caused her pain the Appellant replied that she did not know. She elaborated saying she did not know how she was that day or what medication she had taken. She said she had physio, so was "taped, or I was braced. I don't know." She did not know if her physiotherapist or her sister taped her ankle, but "it worked really, really well."

Counsel pointed out the Appellant's LOF limitation for driving (similar to her February 27th LOF) that checked off the three boxes indicating 0-30 minutes; 30-60 minutes; and, 1-2 hours with her written comment that it "Really all depends on the day…" The Appellant

agreed saying that her “symptoms got worse as it went on and I had to drive through the trauma zone…” She said that she did not struggle with driving in the city but needed to take breaks when driving on the highway.

She confirmed that she did not consider the activity of pulling down on her [car] as related to the “pushing & pulling” category, simply a reference to the rowing machine at physio. The February 27th and January 24th LOF forms similarly checked all boxes related to limitation of her neck function. She wrote that she could move her neck “with a lot of pain”, and occasionally used a neck brace. She testified that she wore a turtleneck because she was “very embarrassed”. When Counsel pointed out that no neck brace had been seen in the videos, the Appellant replied, “I was wearing a turtleneck, but the neck brace was a small one…I didn’t always wear it.”

In anticipation of reviewing the surveillance videos between Monday, November 14, 2011 to Wednesday, November 16, 2011, Counsel referred the Appellant to two emails she sent to her Case Manager on November 17th and 24th, 2011. The November 17th email stated that because of the Nov 2011 MVA she was experiencing headaches, inability to sleep, exhaustion, and blurred vision. She was prescribed “a heavy duty muscle relaxer to help her sleep.” The November 24th email stated that the Appellant was experiencing “extreme headaches”; was overwhelmed by light or noise; unable to tolerate the noise from her [age] nephew; was “completely exhausted”; was experiencing an inability to focus and blurred vision. The Appellant confirmed these statements and elaborated that her symptoms were worse; she was taking cyclobenzaprine; only slept 1-2 or 2-5 hours; and, was “constantly woken up.” She testified that her symptoms did not occur when driving “from the hotel to [store]. They only happened on the highway.”

Surveillance video November 14, 2011

Counsel referred to the surveillance notes and video for the dates November 14, 15, & 16, 2011. When viewing the November 14th video at 2:06 p.m., the Appellant confirmed that the [text deleted] address into which she walked, was the address of her client, [text deleted] and "a few friends." She testified that she was not going to work at this time. The video showed the Appellant walking to a parking meter, and the Appellant agreed that her gait was normal. Counsel pointed out that she then stepped off the curb leading with, and putting her full weight on, her right ankle. When Counsel again suggested that her gait was normal, the Appellant said "No, I would say it's slightly off on that right leg. I would notice it, not everyone would." An hour later, she and [text deleted] walked out of the building together to a vehicle, which the Appellant drove.

Surveillance video November 15, 2011

When reviewing the video surveillance of Tuesday, November 15th, the Appellant reaffirmed that her right ankle injury was aggravated by the Nov 2011 MVA. At 11:54 a.m., the Appellant and [text deleted] walked from her sister's residence to a vehicle which the Appellant drove to [shopping mall]. They walked into a restaurant in the mall, ordered food and the Appellant agreed that her weight was resting on her right leg. She elaborated that this was early in the day when she is fresh and "trying not to need help".

At 2:28 p.m., the video showed the Appellant walking out of [downtown mall] in downtown [text deleted] and bending/crouching down to pick up her dropped keys. Counsel asked if this caused her pain and the Appellant replied that she did not know. The Appellant agreed with Counsel that in her November 17th email, she told her Case Manager, "my

back was really hurting after my shift on Monday" (November 14th), and that she was sore "all over".

Surveillance video November 16, 2011

Counsel reviewed portions of surveillance video dated Wednesday, November 16, 2011. The Appellant confirmed that at 11:43 a.m. she walked out of her sister's residence and agreed that despite the light snow on the ground, she was wearing running shoes, and did not appear to have an ankle brace nor a neck brace. Counsel reminded her of her testimony about wearing a neck brace when walking so as to not jar her neck. The Appellant elaborated that wearing the neck brace was at her discretion, the neck brace was "peachy skin tone" coloured, and she would wear it under a turtleneck.

The Appellant agreed that the driveway was inclined but did not concede Counsel's suggestion that she was not being overly cautious. The Appellant agreed that she turned her head when backing out of the driveway. She agreed that her LOF forms reported that her neck pain worsened in January 2012 as compared to the November 16, 2011 footage. The video footage between 11:43 a.m. and 3:49 p.m. showed the Appellant walking without assistance into and out of a pet food store; a pharmacy; a downtown grocery mart; [grocery store] and [store]. Counsel asked if the light bothered her to which she replied, "Like I said, I wrote those emails in the country."

The Appellant drove the vehicle throughout the day, including the return trip to her residence in Poplarfield. She testified that her common law, [text deleted], did not have a driver's licence at the time. She said that the video did not show whether she was able to drive continuously beyond the [text deleted] area, which is where her anxiety would start. When asked what happened if her anxiety became too much, the Appellant replied that

sometimes she would take breaks or she would leave her vehicle on the side of the road and have her sister come and meet her.

When asked if the Panel was going to hear from [text deleted] or her sister, the Appellant replied that she did not know the process, or know that she could call anybody. She next stated, "I never thought of it honestly." In further response to Counsel's questions, she said she did not know to call witnesses and then admitted that she knew it was possible to call witnesses.

Surveillance video Friday, November 25, 2011 – Sunday, November 27, 2011

Counsel reviewed video from November 25th and 26th. The Appellant confirmed that on November 25th, at 2:06 p.m., the video showed her exiting and driving away from her sister's residence. Video for November 26th, at 12:51 p.m. showed the Appellant walking from her sister's residence to enter the driver's side of her car. The Appellant offered testimony that she was wearing a scarf or a turtleneck to cover the neck brace, which embarrassed her.

Counsel reminded the Appellant of her November 24th email advising her Case Manager that she suffered lack of sleep, was exhausted and tired, and experienced blurriness. The Appellant responded, "Yes, but that was when reading or writing." When asked if she meant that none of those symptoms affected her driving, she replied "No, only when I was experiencing anxiety."

Counsel referred to the Appellant's November 24th email comments about her inability to stay at her sister's residence because she could not take the noise from her [age] nephew. The Appellant replied, "Yes, but my parents were trying to convince me that I should be

with family." She went into a lengthy explanation of her father's remarriage, implying that she would rather be at her sister's residence. The Appellant then volunteered that it looked like she was wearing the neck brace, because we could see from the video that she was checking in the rear-view mirror, hoping no one could see it.

Counsel reviewed video from 1:22 p.m. and 3:52 p.m., showing the Appellant and [text deleted] walking from her vehicle into and out of [address]. The Appellant insisted that her limp was present and when she departed the building she said she probably wore a different jacket because she was cold. She noted that she still wore "something around [her] neck."

Surveillance video November 27, 2011

Counsel reviewed surveillance video for Sunday, November 27, 2011 at 12:37 p.m. The Appellant confirmed that when she walked out of her sister's residence she was not wearing a neck brace. She also confirmed that she was not wearing an ankle brace or ankle tape, but said she only wore such when she had a flare-up. At 1:13 p.m., the Appellant said she was now wearing a neck brace, probably because they were leaving for the day. Counsel noted the Appellant turning her head rather than using her side mirrors to back out of the driveway. The Appellant responded, variously saying:

> "Yeah, a little bit. I would have been using my mirrors and back-up camera. It looked like just a little one, not extreme."

When pressed to confirm that she was, in fact, able to turn her neck to the left, she responded, as follows:

> "Yes, but it doesn't say that I'm not getting pain or medication. But I can turn it there, to a point. My neck brace is a precaution in case I jar it. That was just as a precaution."

Counsel referred to the surveillance notes for 2:01 p.m. that stated she and [text deleted] departed the city via [highway]. The Appellant volunteered, “I didn’t make it home that day.” Counsel suggested, and the Appellant agreed, that [text deleted] would have probably recalled that circumstance. Counsel then asked whether her sister came to get them. The Appellant responded, “My sister or my dad, or I may have turned around and drove 15 minutes and stopped.” She reiterated the logistics of having two people drive to pick them up, or she would leave her vehicle on the side of the road.

Appellant submissions

The Appellant reviewed the circumstances of her Jan 2010 MVA and her resulting neck pain and whiplash. She attended physiotherapy treatment consisting of massage and various other therapies. She began walking more in the spring and although her back condition improved, her ankle swelled and that condition worsened. Her treatment was adjusted to focus on her ankle.

She said her doctor’s reports noted that she made good progress with her neck, shoulder and back problems. However, her neck and ankle remained a chronic injury with her doctor diagnosing tendinopathy. She had started a gradual return to work in 2011 when she was involved in her Nov 2011 MVA.

The Appellant described the mechanics of her Nov 2011 MVA when she struck a deer, at night, near her residence in [text deleted]. She tearfully detailed how the deer was severely injured but not dead, how uncomfortable it was to see it suffer, and how cold it was waiting for her sister to arrive.

She submitted how she did not know that she needed grief therapy. She suffered neck, back and ankle pain. Her headaches intensified and she got less and less sleep. Her ankle was treated by one doctor and another doctor treated her concussion and intensifying headaches.

The Appellant submitted that her Physical Demands Analysis report, which said she made a full bend to show her ankle, reported events 'in the moment', similar to her LOF forms. She had bad anxiety when driving, became profoundly depressed and thought of self-harm. Her neurologist noted an allergy to codeine. She submitted that it took a lot of time and support to deal with her medication and PTSD.

The Appellant referred to and noted the dates of the email exchanges between her employer and the MPIC investigator. She rhetorically asked why her employer was asked payroll questions more than a year after the pay periods. She submitted that it would have been smoother if the questions had been asked right away.

The Appellant said that she was paid cash and then provided a receipt. However, her Case Manager required pay stubs so the Appellant utilized the Revenue Canada PDOC, which MPIC approved as long as she wrote the dates and the amount of hours she worked. She was not asked for the actual times she worked. She tried to give the best information she had available, and she would have provided more, if asked.

The Appellant referred to her PDOC documents for the weeks of November 7 - 11, 2011 and November 14 – 18, 2011, which overlap her November 8, 2011 MVA, and noted her writing that she called in sick. She submitted that her employer reimbursed the Appellant

for the deductions. The Appellant submitted, “She reimbursed, and we sat there and went to the forms. About 23 hours I reported, but I reported 23 hours less to Revenue Canada.” She again submitted that this was a clerical error.

With reference to the SIU Report, the Appellant referred to the email exchange between her employer and the MPIC investigator and submitted that her employer confirmed she did not provide a T4. The transaction consisted of the Appellant being paid in cash for which she provided a receipt. She submitted that when her employer’s hours matched the hours submitted by the Appellant to MPIC, the investigator “assumed we were in cahoots.”

The Appellant submitted that she is being judged with reference to the criminal charges of which she was never convicted. Her lawyer told her “it’s like an acquittal”. MPIC is very prejudiced and looking for a problem.

She submitted that she worked hard to arrange rides into the city. She knows the whole picture, but we are only seeing part of that. She submitted that when she was driving around the city she was going by what her doctors were telling her and what she thought was best for her care. She submitted that her Case Manager’s comment about her weight is an example that MPIC is looking for ways to not pay her instead of dealing with her in good faith.

She submitted that her care fluctuated and her LOF forms were an estimate, which she wrote at home. She noted that her physiotherapy report said that she was sick and experiencing spasms. She submitted that all MPI needed to do was ask. She said she never got work hardening or was assessed by MPIC physically.

She submitted that she was already shaming herself. She had never had an insurance claim like this before and asked, rhetorically, what happened to basic human error. She wished that her mental state had been the objective finding and not the prejudgment that she is making up something.

The Appellant submitted that she was not well when she submitted her taxes and could not afford to pay a third party to do them. She had questions and learned that her IRI money was non-taxable. She referred to her written submission with her AFR which attached further tax assessments. She submitted that she had multiple adjustments. She suggested there was a miscommunication between MPIC and Revenue Canada which was still processing her re-assessments. She submitted that there is no way she made up all of the Revenue Canada documents and it is all prejudgement on the part of MPIC. She pointed out that she provided MPIC with her authorization for information, without question. She submitted that her emails to her employer, after the MPIC investigation, were her attempt to find out if she had done something wrong, to find answers, and to take accountability.

The Appellant submitted that MPIC withheld her IRI cheques to force her to come to the city so she could be surveilled. She asked for help with snow clearing at her rural property, which was denied. She said the prior MPIC lawyer acting on her file “was a lot more aggressive.” She referred to [text deleted] *v. The Manitoba Public Insurance Corporation,* 2021 MBCA 102, which referred to MPIC’s duty to act in good faith. She submitted that MPIC caused her more stress because she felt judged and harassed, and that MPIC withheld her cheques even though it knew of her restrictions.

The Appellant referred to the SAAB reasons and started to provide additional information not heard during her testimony. The Chair cautioned the Appellant that she may not give new evidence. The Appellant persisted, saying, “I’m admitting my wrong doing! I did mislead my landlord into thinking we were in a relationship.” When the Chair questioned the meaning of this admission, the Appellant stated, “I’m owning my responsibility for that. I did make a mistake that I’ll never do again. I also made the mistake where he gifted the car. I’m taking responsibility.” She submitted, “I only take accountability for those two instances where I admit I was wrong.”

MPIC submissions

Counsel submitted that termination and recovery of compensation are the two issues in this appeal. He referred to s.160 of the MPIC Act (“the Act”). The wording says that the corporation may refuse or reduce compensation, or suspend or terminate the indemnity where a person knowingly provides false or inaccurate information. Section 189(1) provides that a person who receives indemnity to which they are not entitled shall reimburse the corporation, and Section 189(2) allows the corporation to commence an action to recover such reimbursement including where the funds are paid as a result of fraud.

He submitted that a claimant is required to provide true and accurate information and MPIC had shown that the Appellant was not truthful. Therefore, the IRD should be upheld. Counsel expressed some sympathy for the Appellant and her feelings about being judged. Nevertheless, he reiterated on behalf of his client, that a claimant cannot lie to the corporation when it is paying the Appellant for income replacement.

Counsel noted that MPIC pays 90% for loss of income. This is not designed to last forever and when injuries do not heal as anticipated, this raises red flags, which is what happened here. If the issue of providing false or misleading information is confirmed, then MPIC may recover the one-year period between November 14, 2011 and November 14, 2012.

Counsel submitted that November 14, 2011 is an important date and if the Appellant has failed to convince the Panel that she did not lie that day, then that date voids entitlement to future benefits. This is also the first day of surveillance and given the fact that she worked that day, it put her claim under very close scrutiny. Further surveillance showed that her activity was inconsistent with her LOF forms. The Appellant's credibility is central to the ultimate determination. In this case, the Panel has the benefit of extrinsic evidence about credibility.

Counsel referred to the six fraud charges related to the cheques which the Appellant stole from her employer. He noted that these all ended in a stay of proceedings and not an acquittal. He submitted that the Appellant did not take responsibility for these charges and maintained that the situation was all a big misunderstanding. He submitted that this was a theme throughout this hearing in that the Appellant always had an excuse for the inconsistencies pointed out during cross-examination.

Counsel submitted that had the Appellant simply reported the truth of what we saw in the videos; that is, she was limited to walking short distances and driving on shopping trips with her boyfriend, she would not have been faulted for doing errands, provided she was complying with her rehab. Instead, he submitted, the Appellant embellished the limitations that her injuries presented.

Counsel referred to the SAAB reasons and submitted that its adverse credibility findings were based upon documentary evidence, including the vehicle transfer letter that gifted a vehicle from [text deleted] to the Appellant on the basis that they were a common-law couple. The SAAB found the Appellant's explanation ("that an insurance broker would knowingly advise them to commit fraud") to be an "incomprehensible response." Counsel referred to the Appellant's testimony in this case, in which she said she would have received greater financial assistance if she had claimed assistance for a common-law relationship. However, he submitted, this missed the point that people are required to be truthful on any application.

Moving to the question of whether the Appellant in fact worked on November 14, 2011, Counsel confirmed MPIC's position that the Appellant's assertion she "pulled through her shift" that day, is false. He noted that the Case Manager's notes of that day's meeting with the Appellant are made contemporaneously with the meeting and state the Appellant advised that she had just got off work at 12:30. Therefore, the Appellant worked from 9:30 to 12:30, which is contradicted by the surveillance video first showing the Appellant emerging at 11:30 a.m.

Counsel pointed out the additional conflicts in evidence between:

- The SIU Report documenting the September 28, 2012 meeting and discussion about the November 14, 2011 PDOC in which the Appellant says she "might have got the date wrong". The Appellant does not state that the Case Manager made an erroneous assumption or describe the early morning shift and bath of her client;

- The Appellant's addendum to her January 23, 2013 AFR does not mention the early morning bath or erroneous assumption by her Case Manager;
- The Appellant's February 4 & 5, 2013 email exchange showing that her employer CH cannot confirm whether the Appellant worked on November 14, 2011;
- The Appellant's Employer's Verification of Earnings ("EVE") and cover letter from [client's sister] that states the Appellant "tried to come into work on November 14, 2011 when she was sent home due to a bad head ache." Counsel submitted that it does not state the Appellant worked that day;
- The Appellant's testimony that she started her day very early, however all of the video surveillance consistently shows the Appellant appearing between 11:30 a.m. and approximately noon, similar to the November 14, 2011 surveillance video.

Counsel submitted that comparison between the Appellant's January 24, 2012 LOF form and the video surveillance of January 24, 25 & 26, 2012 is particularly compelling. The Appellant's only explanation for the inconsistencies between the LOF forms and the video was that she completed her LOF forms in the country, from her physio perspective, not her city activities perspective. Counsel reviewed all of the driving and activities performed by the Appellant over the course of those three days, including carrying her nephew on her shoulders and holding him suspended over the pool. He urged the Panel to revisit that LOF form, particularly the function related to her driving.

Counsel referred to the July 13, 2012 MPIC Health Care Services ("HCS") Medical Report in which the medical consultant compared the LOF forms with the video surveillance footage. Counsel addressed the Appellant's submission that MPIC grouped all of her LOF

forms together. He pointed out that the July 13th HCS Report did not group the forms, but listed her difficulties and provided a good summary that set out her self-reported limitations, compared them with the video, and spoke to inconsistencies. While the HCS Report is helpful, Counsel submitted that this Panel is also fully capable of seeing the inconsistencies between the LOF forms and the surveillance video.

Counsel highlighted the January 26, 2012 surveillance video which showed the Appellant from 11:41 a.m. until 0024 hours driving to various locations during the day, playing with her nephew in the motel pool at about 6:30 p.m., and then shopping at [store] and [grocery store], with a final visit to her grandmother until after midnight. He submitted that the video surveillance is the determinative evidence for the Panel to consider. Counsel further submitted that the Appellant's driving also involved sitting, which the video showed is much longer than the limitations indicated on the LOF forms.

Counsel emphasized that it was the Appellant's assertions that she was more limited than she was in fact that led to the termination of her benefits. One example of this is her neck function, which checked all boxes of difficulty in all movements and described "lots of pain all ways", yet the surveillance video showed her ability to turn her head to shoulder check. Counsel referred to the February 27, 2012 LOF form and the "epic shopping excursion" at [grocery store] in which the Appellant stood in one place for 10-15 minutes making her meat selection, and did not sit for almost an hour. She was able to push a full shopping cart and unload all of the groceries.

Counsel referred to the Appellant's gait and her insistence that what we saw on the video was not her normal gait. Counsel submitted that the video showed her stepping onto and off of a curb on her right foot. When he suggested that the video would show her with a more pronounced limp closer to the Nov 2011 MVA, he submitted that the Appellant always had an explanation for why we never saw the limp. He referred to the HCS Medical Report in which the doctor observed a normal gait and concluded, as follows, at page 13:

> "In my opinion, a discrepancy exists between symptoms and limitations [the Appellant] reported to the health care professionals involved in her care and Manitoba Public Insurance and the functional capabilities she demonstrated while under surveillance. It is my opinion the discrepancy cannot be explained by the use of medication."

Counsel submitted that painkillers could not hide the reported symptoms and limitations. Counsel also noted the HCS Consultant's comments that during the times the Appellant was under surveillance, her movement patterns did not change and therefore it was reasonable to conclude that her physical status did not deteriorate as the day progressed. Counsel noted the surveillance notes for November 30, 2011 which note the Appellant driving for much of the day and then departing the city northbound. He submitted that we only have her testimony that her anxiety may have caused her to turn around. Counsel submitted that the Panel should draw an adverse inference from the fact that her common-law partner, her sister and her dad did not testify to her assertions of having to be picked up in [text deleted], or on the highway and be driven to [text deleted].

On the subject of whether the Appellant provided false tax documents, Counsel conceded that the test is whether the Appellant knowingly provided false information and this test may not have been satisfied by the evidence. Counsel appreciated that the Appellant is

not an accountant. Nonetheless, Counsel submitted that it was reasonable for MPIC to request copies of her income tax returns to confirm the rudimentary pay stub information. He pointed out that Exhibit 3 does show a discrepancy.

Returning to the main issue of the pay stubs, Counsel submitted that the testimony on their creation was confusing. He submitted this is an online calculator for deductions provided by Revenue Canada that is only as accurate as the information inserted by the user. The Appellant testified that she completed this form but always in the presence of her employer. This was either [client's mother], or her daughter/office manager [client's sister]. Counsel questioned the reliability of this evidence and noted that there is a discrepancy between the 366 hours reported by {client's mother] and the 389 hours submitted on the pay stubs for 2011. This discrepancy of 23 hours could amount to 6 or 7 shifts that the Appellant reported to MPIC, but did not work. Counsel noted with interest that the Appellant spoke of some other kind of document they utilized for the cash transaction, however she threw these out.

Counsel submitted that the 23-hour discrepancy alone amounts to evidence of providing inaccurate information. This amounts to six or seven shifts in which she said she worked but in fact, did not. Counsel submitted that while the Appellant may argue that this only results in less money being paid by MPIC, the important point is to determine whether truthful information was provided. The Appellant's time sheets or pay stubs were a form of self-reporting which must be viewed through the lens of credibility. Credibility is the determination for the panel.

Counsel submitted that the onus is on the Appellant to show on a balance of probabilities that her benefits were improperly terminated by MPIC. He submitted that MPIC properly terminated the benefits for all the above reasons and in particular her self reported LOF compared against the surveillance videos. He submitted that the Appellant's explanation that she completed the LOF forms only with a view as to how she was feeling at the moment was not a plausible explanation. He submitted that she would know that the purpose of the Forms was so that MPI could gauge how she was functioning and ultimately when she would be able to return to work.

Appellant rebuttal

The Appellant essentially provided new or repetitive information that was not proper rebuttal.

Legislation

> **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;
>
> **Corporation to be reimbursed for excess payment**
> **189(1)** Subject to sections 153 (payment before decision by corporation), 190 and 191, a person who receives an amount under this Part as an indemnity or a reimbursement of an expense to which the person is not entitled, or which exceeds the amount to which he or she is entitled, shall reimburse the corporation for the amount to which he or she is not entitled.
>
> **Time limitation for recovery of payment**
> **189(2)** The corporation may commence an action to recover an amount to which it is entitled to be reimbursed
> (a) within two years after the day the amount is paid to the person;

> (b) where the amount is paid as a result of fraud, within two years after the day the fraud is first known or discovered by the corporation; or
> (c) where the victim is convicted of an offence as provided for in section 161.1, within two years after the day of the conviction.

Discussion and Findings

Credibility and Reliability

The Panel considers a number of factors when determining credibility and reliability of a witness. These factors involve the clarity and consistency of a person's testimony both within the testimony and with prior statements or documents. Another factor is whether the testimony is corroborated by independent documents. The Panel will also look to whether a witness embellishes or exaggerates testimony, both of which tend to diminish credibility and reliability. The Panel may consider a witness' demeanor, however, this is the least important of all factors when assessing credibility and reliability.

The Panel considered that the Appellant was self-represented. The Appellant stated that she found the hearing stressful and had little sleep. Nervousness is understandable. Also, the Appellant testified to circumstances that occurred anywhere from 10 to 12 years ago. The Panel understands that memory fades with time.

Nonetheless, the Appellant did not testify in a straightforward and cogent manner. She tended to avoid answering straightforward questions and, instead, responded with tangential comments that made her appear evasive. She would not concede facts that should obviously have been conceded, which made her testimony appear untrustworthy.

The Appellant exaggerated or embellished her testimony. Examples of embellished testimony include her statements about being suicidal to the point where family members were allegedly concerned for her safety (for which there is no supporting medical evidence or witness testimony), and her alleged awareness of being followed in [grocery store]. She had surprising recollection of the November 24, 2011 email in which she wrote that her father intended to spend the night, but in fact allegedly did not stay overnight but drove her to [text deleted]. She also spontaneously recalled not being able to complete her return trip to [text deleted] on November 27, 2011.

Finally, on November 14, 2011 the Appellant testified that she could not remember what she said to her case manager (about getting off work at 12:30) because it was so long ago, yet she spontaneously recalled that she picked someone up from her workplace just prior to attending the meeting with her case manager. These recollections are noteworthy when considering the self-serving nature of the comments, the lack of corroboration, they contradict the Appellant's comments about "PTSD" affecting her memory and as previously stated, memory generally fades with time.

Her testimony was inconsistent with surveillance videos; and inconsistent with other statements she made in the hearing, including the very important November 14, 2011 meeting with her Case Manager. Her testimony was inconsistent with the documentary evidence, she added explanations that she had not previously provided and which were inconsistent with other testimony. Overall, the Panel did not find the Appellant's testimony to be either credible or reliable and relied primarily on the documentary evidence.

“Knowingly provides false or inaccurate information” – November 14, 2011

The Panel focused on the circumstances involved with the November 14, 2011, 1:30 p.m. meeting between the Appellant and her Case Manager. The notes by the Case Manager say that the Appellant “just got off work at 12:30.” Video surveillance showed the Appellant driving from the [text deleted] residence at 11:30 a.m. and arriving at [address] at 11:43 a.m. This is the location where her client [text deleted] resided, and where she allegedly cared for him that morning. After departing [address], the Appellant arrived at [downtown mall] at 1:13 for her meeting.

The Appellant denied stating that she ‘just got off work’ and testified that she would have said words to the effect of ‘I worked that morning.’ She testified that she would have worked a shift from 3 or 4 a.m. to 7 a.m., returned to [text deleted], then left to attend her meeting and complete other errands. The Panel does not find this testimony credible for a number of reasons.

First, it is difficult to envision a scenario in which a [text deleted] worker would arrive at a private residence at 3 or 4 a.m. to start a shift. This is the time when families are typically asleep. There is no evidence that [client]’s mother or sister were unavailable in the residence. There is no evidence that the Appellant relieved another [text deleted] worker at this early hour. The Appellant later stated that she worked “overnight”, which was inconsistent with her emails and other testimony. This testimony does not have the ring of truth.

Secondly, the Case Manager's meeting notes of November 14, 2011 have weight. They were made contemporaneously with the meeting and represent the best evidence before the panel.

Thirdly, the Case Manager's comment about the Appellant just getting off work is somewhat corroborated by the Appellant's own words in her email to her Case Manager three days later on November 17, 2011, in which the Appellant wrote, as follows:

> …I know that my back was really hurting after my shift on Monday and I had to clean the tub at my clients [sic] place… I met with you **shortly after that** and was complaining of my back hurting… [emphasis added]

The phrase "shortly after that" is more consistent with an hour break between her work and meeting, as compared to a five hour break between work and the meeting.

Finally, less than two months after the November 14, 2011 meeting, employer [the sister] provided to MPIC an EVE and letter dated January 5, 2012, which stated as follows:

> … She suffered a bad concussion and some other minor injuries but still tried to come into work on November 14, 2011 **when she was sent home due to a bad headache**… [emphasis added]

The Appellant explained that she was both sent home and finished her shift that day. However, she did not testify, nor had she previously documented, that her employer sent her home on November 14, 2011, which is a fact that the Panel finds the Appellant would probably recall, especially when speaking to her Case Manager after her shift that day. The Panel noted various PDOC documents in which the Appellant provided descriptions of her work day including, on September 20, 2011, "Sent home early to grieve for aunt and uncle"; and October 5, 2011, "sent home early…client sick".

The Panel finds that being ‘sent home’ is also inconsistent with the Appellant’s testimony that she worked her full shift that day. Finally, the Case Manager also wrote in her November 14, 2011 note that the Appellant was “able to perform all of her activities of daily living and doesn’t require assistance”, which is inconsistent with being sent home.

The Panel also finds that the Appellant’s testimony of picking up “casual” shifts or being ‘fit in’ to the work schedule (or providing “last minute care” as reported by her employer) is inconsistent with the consistent days and hours she recorded on the PDOC documents between December 27, 2010 and November 14, 2011. It is also clear that the PDOC documents provided to MPIC total 389 hours for 2011 while, inexplicably, the Appellant and her employer both calculated 366 hours for 2011. This is evidence of inaccurate information submitted to MPIC and has the appearance of collusion between the Appellant and her employer.

The Appellant did not call [the mother] or [the sister], to explain the unusual early morning work shift, the recording and calculation of hours, or to explain the discrepancy between the Appellant’s version and her employer’s version of work on the crucial date of November 14, 2011. The Appellant did not have a valid explanation for declining to call witnesses. The Panel finds that the Appellant knowingly provided false or inaccurate information in relation to her work hours on November 14, 2011.

“Knowingly provides false or inaccurate information” – LOF forms

The Appellant’s emails in the spring and summer of 2011 (18 months post Jan 2010 MVA) showed a gradual improvement in her back and ankle pain to the point where she gradually returned to working 3-4 hours per day, three days per week and then five days

per week. In July 2011, she had increased ankle and back pain, and her doctor reportedly reduced her work schedule back to three days per week.

MPIC requested updated LOF forms. The Appellant's July 27, 2011 LOF form reports low level of function in every body movement except her neck. With reference to walking and driving, the Appellant wrote that some days were harder than others. In every subsequent LOF form the Appellant makes some form of written comment about how her functioning 'depends on the day'. These written comments are inconsistent with the Appellant's testimony that she completed the LOF forms in conjunction with her physio and only considered how she was feeling at that moment.

The LOF forms describe her level of function to be worse than her functioning observed in the surveillance videos. Despite the Appellant's insistence that she was limping, the Panel did not observe any limp or abnormal gait. Despite the Appellant's reports of neck pain, the Panel did not observe any inability to turn her neck to shoulder check. The Appellant's testimony about wearing a flesh coloured neck brace under a turtleneck or scarf in November 2011 is inconsistent with her November 24, 2011 email in which she states that she will not see her doctor for another week, and her December 27, 2011 email in which she first mentions submitting a receipt for a neck brace.

Despite the Appellant's reported inability to walk or stand for longer than 15-30 minutes, the Panel observed the Appellant walking and standing for longer periods of time while shopping. Despite the Appellant's reported inability to sit for more than 15 minutes, the video showed her sitting and driving for periods of anywhere from 15 minutes to one hour

without apparent difficulty exiting her vehicle afterwards. The surveillance video of the Appellant lifting and catching her [age] nephew is also inconsistent with the functioning she described in her LOF forms. The Panel finds her explanation of the inconsistencies between the LOF forms and the surveillance videos to be insufficient.

The Panel considered the HCS Report dated July 13, 2012 and finds that it accurately compares the LOF forms with the surveillance video. The Panel agrees with and relies upon the Report's conclusion that discrepancies in the Appellant's functioning cannot be explained by the use of medications. The Panel finds that the Appellant knowingly provided false or inaccurate information on her LOF forms.

"Knowingly provides false or inaccurate information" – Tax Returns

The evidence pertaining to the Appellant's various tax returns and notices of assessment was disjointed and confusing. Without further explanation of the tax document entered by consent as Exhibit 3, the Panel did not consider it.

Further, the Appellant's 2011 Assessment dated January 8, 2013, submitted with her AFR, appears to be consistent with the Appellant's testimony that her income varied from zero income, then $29,359, then $5,669. The notes on page three of that document indicate that there were 2 Reassessments, and deductions are tax exempt from insurance. This appears consistent with the Appellant's testimony that she did not know her IRI should not be claimed as income and did not understand how to correctly file her tax returns.

The Panel finds there is insufficient evidence to prove on a balance of probabilities that the Appellant knowingly provided false or inaccurate tax information.

Reliance on admitted extrinsic documents

Although the Appellant consented to their admission, the Panel carefully considered the probative value of the criminal records and SAAB decision. The Appellant admitted that she stole and forged company cheques. She did not take responsibility for these acts, insisting that this was her money.

The Panel noted the Appellant's admission of her "wrong doing" in the SAAB hearing and noted her statement about taking accountability. She admitted to misleading her landlord into thinking she was in a common-law relationship.

However, the SAAB found that she was, in fact, in a common-law relationship. The Panel accepts this finding. In her cross-examination here, she confirmed that the issue before the SAAB was whether she was in a common-law relationship. She reiterated that at the time of the SAAB hearing she was "single and had a roommate." [Text deleted] did not testify to corroborate this statement.

In her closing remarks the Appellant insisted on explaining that in the SAAB hearing she had "misled" her landlord about her relationship, as alleged. Therefore, she lied under oath at the SAAB hearing, and restated that lie in this hearing when she said she was single and had a roommate.

Witnesses

The onus is on the Appellant to prove her assertions on a balance of probabilities. At the start of the hearing, the Chair asked the Appellant if [text deleted] (who was present) would

be called as a witness. The Appellant confirmed he would not be called. The Appellant admitted that she knew she had the right to call witnesses.

It is noteworthy that the Appellant did not call any witnesses to corroborate her statements about her work hours, her functioning, or her difficulties with driving between [text deleted] and [text deleted]. The Panel agrees with MPIC Counsel that the Panel should draw an adverse inference from the Appellant's failure to call witnesses; the inference being that these witnesses would not have corroborated the Appellant's testimony.

Disposition

The Appellant has failed to prove, on a balance of probabilities, that MPIC improperly terminated her benefits pursuant to s.160(a) of the Act. The Panel dismisses her Appeal and confirms the IRD.

The Appellant shall reimburse MPIC the overpayment of benefits in the amount of $25,717.00 pursuant to s.189(1).

Dated at Winnipeg this 12th day of July, 2022.

PAMELA REILLY

LEONA BARRET

BRIAN HUNT