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## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-05-16**

**PANEL:** Mr. Mel Myers, Q.C., Chairperson  
Ms Wendy Sol  
Mr. Les Marks

**APPEARANCES:** The Appellant, [text deleted] was represented by [Appellant's representative];  
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.

**HEARING DATE:** March 29, 2006 and June 20, 2006

**ISSUE(S):** Whether Income Replacement Indemnity benefits were properly reduced to \$534.08 bi-weekly effective October 19, 2004.

**RELEVANT SECTIONS:** Sections 165 and 166 of The Manitoba Public Insurance Corporation Act (the 'Act') and Section 10 of Manitoba Regulation 39/94

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

### Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on October 20, 1995 and suffered injuries which prevented her from returning to her pre-accident employment and, as a result, she was in receipt of Income Replacement Indemnity ('IRI') benefits.

#### Case Manager's Decision

On October 20, 2004 the Appellant received a letter from MPIC's case manager which stated:

This letter is to advise you about the indexation of your Income Replacement Indemnity (IRI) benefits effective October 19, 2004.

Your Gross Yearly Employment Income (GYEI) is subject to annual indexation on the anniversary date of your accident. Your GYEI is multiplied by a percentage according to the Consumer Price Index (CPI).

Your current GYEI is \$[text deleted]. Current multiplier, based on the Consumer Price Index is 1.018% effective March 1, 2004. Your adjusted GYEI, effective October 19, 2004, is therefore \$[text deleted].

The review for annual indexation noted that you have been receiving the married deductions in error and this has now been corrected to reflect that you are legally separated. As a result your bi-weekly entitlement will be reduced to \$[text deleted] effective October 19, 2004 to reflect you are legally separated. MPI will be in further contact in regards to the overpayment made to you as a result of this error.

I have attached copies of the relevant information taken into consideration as well as sections of the Manitoba Public Insurance Corporation Act and Manitoba Regulations relied upon when making these decisions.

If you have any questions about this decision or any other matters concerning your claim, please do not hesitate to contact me at [text deleted].

### **Internal Review Officer's Decision**

As a result the Appellant filed a Application for Review of the case manager's decision dated November 5, 2004. The Internal Review Officer was unable to contact the Appellant and therefore proceeded to review the Appellant's file and subsequently wrote to the Appellant on December 15, 2004 confirming the case manager's decision dismissing the Appellant's Application for Review. In his decision the Internal Review Officer stated:

. . . It was [text deleted's] decision therein, upon reviewing your file for annual indexation, that it was noted that you had been receiving the married deduction in error. Having discovered that error, calculations were done in order to reflect the fact that you are legally separated. Those calculations resulted in your bi-weekly IRI entitlement being reduced to \$[text deleted] effective October 19, 2004. As stated, this reflects the fact that you are legally separated.

The Internal Review Officer further stated:

As you may be aware, compensation payable to victims of automobile accidents occurring after March 1, 1994, is provided for within the provisions of The Manitoba Public Insurance Corporation Act and Regulations thereunder. In particular, the provisions of Manitoba Regulation P215-R.M. 39/94 (Section 10) provides for the computation of an individual's net income which is based upon a victim's gross yearly employment income less certain deductions. Those deductions are as provided for under The Income Tax Act of Canada. The application of The Income Tax Act of Canada to your IRI entitlement, is the basis for [text deleted]'s decision of October 20, 2004.

As the Case Manager's decision is supported by the legislation, I am dismissing your Application and upholding [text deleted]'s decision of October 20, 2004.

### **Notice of Appeal**

On January 14, 2005 the Appellant wrote to the Internal Review Officer and stated:

Re: Restoration of my by (sic) weekly disability (sic) benefits and the corresponding retro-active pays.

Dear Att. [MPIC's Internal Review Officer];

I wish to request for the adjustment of my by (sic) weekly disability (sic) benefits (by considering the deduction of \$40.00 by (sic) weekly to be restored,) starting OCT.20, 2004 Likewise, I would like to request for the corresponding retro-active pays due to the necessary adjustment and correction pertinent thereto.

Thank you very much for the special consideration of the above request.

On January 17, 2005 [MPIC's Internal Review Officer] wrote to [text deleted], Director of Appeals, and stated:

Please find enclosed herewith a copy of [the Appellant's] letter to me of January 14, 2005. It would appear that this has been written in response to my enclosed Internal Review Decision of December 15, 2004. If I am correct in this assumption, it would appear that [the Appellant] is seeking an Appeal from the enclosed Internal Review Decision. If I am incorrect in this assumption, would you kindly let me know in due course.

A copy of this letter was forwarded by [MPIC's Internal Review Officer] to the Appellant. On May 27, 2005 [text deleted], Director of Appeals, wrote to the Appellant and stated:

We acknowledge receipt of your undated letter received May 17, 2005. We acknowledge that the Commission has received your Notice of Appeal regarding MPI's internal review decision no. [text deleted] dated December 15, 2004. As you know the Commission has jurisdiction to hear appeals of Internal Review decisions of MPIC. The decision you have appealed deals with the following issues:

- Whether the recalculation of bi-weekly IRI entitlement was correct (i.e. an adjustment to your annual indexation to reflect a change in your marital status).

The following are the issues that you state should be determined by the Commission:

- Whether the recalculation of bi-weekly IRI entitlement was correct.
- Whether the permanent impairment award was properly calculated.
- Allowance for the services provided by a caregiver.
- Augmentation and revision of disability benefits.
- Retroactive payments re: IRI, PIPP, caregiver services and disability benefits.

Please contact the writer upon receipt of this letter if I have incorrectly stated the issues that you believe the Commission should determine.

On August 25, 2005 [Commission's Director of Appeals] provided a further letter to the Appellant as follows:

This will confirm our conversation today in which I advised that I have not received a response to my letter to you dated May 27, 2005. I further advised that the only issue under appeal that is before this Commission is whether the recalculation of bi-weekly IRI entitlement was correct.

You stated that there is also an issue that may be related to permanent impairment entitlement dating back to 2003. I advised that if it is your intent to appeal an MPIC Internal Review decision that is beyond the 90-day deadline, you must write to the Commission to request an extension of time and you must provide reasons as to why you did not file your appeal within the required 90-day time period. The Commission will consider the request and advise you as to whether or not it will grant an extension of time to file an appeal.

Please do not hesitate to call me if you have any questions.

The Commission notes that the Appellant did not request an extension of time from the Commission in respect of an appeal relating to a permanent impairment entitlement.

On October 27, 2005 the Director of Appeals, [text deleted], prepared an Index of all relevant material to be filed at the appeal hearing. On October 31, 2005, [Commission's Director of Appeals] couriered to the Appellant a letter dated October 27, 2005 enclosing the Index material and requested the Appellant to view the material and provide any further documents she may wish to add to the material that will be considered by the Commission at the appeal hearing.

On December 15, 2005 [Commission's Director of Appeals] wrote to the Appellant and stated:

This will confirm our telephone conversation today in which you advised that you are ready to set a date for the hearing for your appeal. You stated that you have no additional documents to add to the material to be considered, that you will call 2 witnesses ([text de;eted] and [text deleted]), and that [Appellant's representative] will represent you at the hearing.

Please contact me immediately if this information is incorrect. I will also arrange to have an interpreter able in [text deleted] available at the hearing should it be required.

If you have any questions, please do not hesitate to call me.

### **Notice of Hearing**

On December 19, 2005 the Commission issued a Notice of Hearing to the Appellant and to her representative [text deleted] and this letter stated in part:

Counsel for the Appellant having advised the Commission that he has now provided the Commission with all written material in the Appellant's possession that is relevant to the above-noted appeal (**including**, but not limited to, **all medical and related reports**, the Commission has fixed:

**Date:** Tuesday the 1<sup>st</sup> day of March, 2006  
**Time:** 9:30 o'clock in the forenoon  
**Place:** 301-428 Portage Avenue, Winnipeg, MB, R3C 0E2

for the hearing of the appeal. That time and date are firm; postponements will only be granted under unusual circumstances of a compelling nature.

The subject of the appeal is outlined on the Issues Under Appeal cover sheet a copy of which was provided with the indexed file.

The Commission further notes that the document entitled Issues Under Appeal stated:

Whether Income Replacement Indemnity benefits were properly reduced to \$[text deleted] bi-weekly effective October 19, 2004.

Subsequently, the Commission advised both parties that the hearing would take place on March 29, 2006.

#### **Appeal Hearing – March 29, 2006**

The hearing commenced on Wednesday, March 29, 2006 at approximately 9:30 o'clock in the forenoon. Present at the hearing was the Appellant, her representative [text deleted], [text deleted, witness for the Appellant, [text deleted], interpreter, and Ms Dianne Pemkowski, legal counsel for MPIC.

At the commencement of the hearing the Commission noted that the Appellant's representative did not have a copy of the Indexed material that had been forwarded to the Appellant on October 31, 2005 by courier. However, the Appellant's representative had in his possession the Indexed material relating to a previous appeal wherein he represented the Appellant before the Commission. That appeal hearing took place on January 6, 2003, March 17, 2003 and May 21, 2003 and the issues before the Commission at that time were:

1. Entitlement to further permanent impairment benefits for scarring of the right thigh;
2. Entitlement to permanent impairment benefits for hip and thigh problem;
3. Entitlement to permanent impairment benefits for vision problems;
4. Entitlement to Income Replacement Indemnity benefits beyond December 17, 1995.

In that appeal the Commission reinstated the Appellant's IRI benefits which had been terminated on or about December 17, 1995.

It is clear from the Commission panel's questions that the Appellant's representative at the appeal hearing on March 29, 2006 was unaware that the Commission had issued a new Index containing all of the relevant material in respect of the present appeal before the Commission. The Appellant's representative wished to proceed with the hearing, notwithstanding the fact that he had not examined the Index material of the new appeal, which constituted the evidence that had been filed in these proceedings. The Commission panel then proceeded to spend the next two (2) hours and ten (10) minutes explaining to the Appellant's representative that the only issue under appeal was whether the Appellant's IRI benefits had been properly reduced to \$[text deleted] bi-weekly, effective October 19, 2004, by MPIC. At the conclusion of this process the Appellant's representative requested an adjournment to review the Index material. MPIC's legal counsel had no objection to this adjournment and, as a result, the Commission adjourned the proceedings for the purpose of setting a new date to hear the merits of the appeal.

Subsequent to the adjournment of this appeal hearing the Commission prepared a draft letter, setting out a summary of the events that took place before the Commission on March 29, 2006. This letter was forwarded to both representatives inviting both representatives to provide their comments if they wished. The Appellant's representative did not provide any comments. However, MPIC's legal counsel did provide some comments, which were incorporated into the Commission's letter, and a copy of this letter, dated April 12, 2006, was forwarded to both representatives. The contents of this letter are set out herein as follows:

The Automobile Injury Compensation Appeal Commission hearing in respect of the above mentioned appeal commenced on Wednesday, March 29, 2006 at approximately 9:30 o'clock in the forenoon. Present at the hearing were the Appellant, [the Appellant],

[text deleted], representative for the Appellant, [text deleted], witness for the Appellant, [text deleted], interpreter, and Ms Dianne Pemkowski, legal counsel for MPIC.

At the commencement of the hearing, and prior to any evidence being submitted by either of the parties, [Appellant's representative] informed the Commission panel that the Appellant had not received a copy of the Indexed file dated October 27, 2005. The Commission adjourned the proceedings and conducted a search of the Appellant's file which indicated that on October 31, 2005 [Commission's Director of Appeals] had couriered a letter to the Appellant enclosing the Indexed file dated October 27, 2005 by courier. Located in the Commission file was a Mid-Canada Courier slip, dated November 1, 2005, indicating that [Commission's Director of Appeals]'s letter of October 31, 2005, together with the Indexed file, had been delivered to [the Appellant] at [text deleted].

The Appellant was shown the courier slip in the Commission file and identified her signature on this document and indicated that she acknowledged receipt of the Indexed file on November 1, 2005. The Appellant informed the Commission panel that she had in fact received [Commission's Director of Appeals]' letter and Indexed file on November 1, 2005 but, during the course of moving, she had apparently lost the Indexed file.

The Commission file also contained a letter from [Commission's Director of Appeals] to the Appellant dated December 15, 2005 in which [Commission's Director of Appeals] confirmed her discussion with the Appellant on December 15, 2005 wherein the Appellant indicated that she was ready to proceed to set a date for the hearing of her appeal. The Commission chair then filed in these proceedings as Exhibit 1 [Commission's Director of Appeals]' letter of October 31, 2005, Exhibit 2 the [text deleted] Courier Slip dated November 1, 2005 and a letter from [Commission's Director of Appeals] to the Appellant dated December 15, 2005 as Exhibit 3.

The Commission panel provided a copy of the Indexed file dated October 27, 2005 to [Appellant's representative] and requested whether the Appellant wished to obtain an adjournment in order to review the Indexed file before proceeding with the appeal. [Appellant's representative] indicated to the Commission panel that he wished to proceed with the appeal at that time without any adjournment. The Commission chair however advised [Appellant's representative] that he should consult with the Appellant before proceeding with the appeal hearing without having reviewed the evidence which had been placed before the appeal hearing and adjourned the proceedings for 15 minutes.

When the hearing reconvened [Appellant's representative] indicated that he had consulted with his client and wished to proceed with the appeal hearing. [Appellant's representative] commenced his submission by setting out the following issues which he indicated were to be determined by the Commission panel in these proceedings:

1. Reduction of the Appellant's Income Replacement Indemnity benefits;
2. Termination of the Appellant's Income Replacement Indemnity benefits;
3. Allowance for services provided by a caregiver; and
4. Permanent impairment entitlement.



In response, the Commission panel indicated that the only issue in appeal is set out in the first page of the Indexed file under the heading "Issue(s)" which stated:

Whether Income Replacement Indemnity benefits were properly reduced to \$[text deleted] bi-weekly effective October 19, 2004.

In reply, [Appellant's representative] submitted that from his review of correspondence between [text deleted], the case manager, and [MPIC's Internal Review Officer], the Internal Review Officer, the Commission had jurisdiction to hear and determine the above mentioned appeal issues. MPIC's legal counsel submitted that this correspondence related to MPIC's termination of the Appellant's IRI which was not an issue which was before the Commission at this time.

The Commission chair referred [Appellant's representative] to Exhibit 1, [Commission's Director of Appeals'] letter to the Appellant dated October 31, 2005, which had enclosed the "Issue(s) Under Appeal" sheet and which stated that the sole issue in this appeal related to the issue of reduction of Income Replacement Indemnity benefits. The Commission chair also referred [Appellant's representative] to:

1. Document No. 3 of the Indexed file, which is a letter dated May 27, 2005 from [Commission's Director of Appeals] to [the Appellant], which indicates that the only Internal Review Officer's decision that the Appellant had appealed related to the reduction of Income Replacement Indemnity benefits.
2. Document No. 2 of the Indexed file, [Commission's Director of Appeals]'s letter dated August 25, 2005 to [the Appellant], which stated:

This will confirm our conversation today in which I advised that I have not received a response to my letter to you dated May 27, 2005. I further advised that the only issue under appeal that is before this Commission is whether the recalculation of bi-weekly IRI entitlement was correct.

You stated that there is also an issue that may be related to permanent impairment entitlement dating back to 2003. I advised that if it is your intent to appeal an MPIC Internal Review decision that is beyond the 90-day deadline, you must write to the Commission to request an extension of time and you must provide reasons as to why you did not file your appeal within the required 90-day time period. The Commission will consider the request and advise you as to whether or not it will grant an extension of time to file an appeal.

Please do not hesitate to call me if you have any questions.

The Commission chair then requested [Appellant's representative] to advise the Commission panel if the Appellant had applied for an extension of time from the Commission in respect of the Appellant's claim for a permanent impairment entitlement. [Appellant's representative] advised that the Appellant had not made such an application to the Commission. The Commission chair then advised [Appellant's representative] that at this time the Commission did not have jurisdiction to hear and determine the issue of the Appellant's claim for a permanent impairment entitlement.

The Commission chair, during the course of referring to the above mentioned documents, asked both [Appellant's representative] and the Appellant directly whether they understood the meaning of these documents, and both [Appellant's representative] and the Appellant indicated they did. Although it appeared to the Commission panel that the Appellant was able to both understand and speak the English language, the Commission chair requested the interpreter, [text deleted], to communicate in the [text deleted] language with the Appellant to ensure that she understood the meaning of the above mentioned documents. The interpreter did discuss this issue with the Appellant in the [text deleted] language then informed the Commission panel that the Appellant did understand the content of these documents.

The appeal hearing recessed for approximately 15 minutes and when the hearing reconvened the Commission chair informed [Appellant's representative] that the Commission panel had determined that the only issue that the Commission had jurisdiction to hear on this appeal was whether the Income Replacement Indemnity benefits were properly reduced effective October 19, 2004 by MPIC.

Notwithstanding a painstaking review of the issue under appeal by the Commission panel during a period of over two hours, [Appellant's representative] insisted that the Commission had jurisdiction to consider not only the issue of the reduction of the Income Replacement Indemnity benefits, but also jurisdiction to determine the Appellant's claim for a permanent impairment allowance and a caregiver allowance.

In response, the Commission chair repeated to [Appellant's representative] that since the Appellant failed to file a Notice of Appeal within the ninety day limit as set out in the MPIC Act, the Appellant must apply for an extension of time from the Commission before being permitted by the Commission to file an appeal in respect of the permanent impairment entitlement.

In respect of the issue relating to the Appellant's claim for an allowance for services provided by a caregiver, the Commission informed [Appellant's representative] that the Commission panel was in agreement with MPIC's legal counsel that this issue had not been dealt with in the case manager's decision dated October 20, 2004 (document no. 12, Indexed file), or the decision of the Internal Review Officer dated December 15, 2004 (document no. 8, Indexed file) and, as a result, the Commission did not have jurisdiction to deal with this claim. The Commission also advised [Appellant's representative] that if the Appellant wished to obtain a remedy in respect of her claim for a caregiver benefit, the Appellant was required to:

1. file an application for compensation in respect of this benefit with MPIC;
2. that a MPIC case manager would conduct an investigation into this claim and issue a decision either allowing the claim or rejecting the claim in writing.
3. if the case manager rejected this claim in writing, then the Appellant had the right to make an application for review of the case manager's decision to an Internal Review Officer;

4. the Internal Review Officer would conduct a hearing in order to hear the Appellant's submission and would review all of the relevant documentary evidence and would issue a decision either accepting or rejecting the Appellant's application for a review of the case manager's decision;
5. if the Internal Review Officer rejected the Appellant's claim, then the Appellant had a right, in a timely fashion, to file a Notice of Appeal with the Appeal Commission;
6. when the Appellant had complied with the above mentioned procedures, then the Commission would have jurisdiction to hear and determine this issue.

In respect of the Appellant's claim in respect of the termination of Income Replacement Indemnity benefits, the Commission was informed by MPIC's legal counsel that she was not aware that a decision had been issued by MPIC in respect of this claim. The Commission chair informed [Appellant's representative] that if the decision of the Internal Review Officer in respect of the Appellant's claim relating to the termination of her Income Replacement Indemnity benefits was rejected by the Internal Review Officer, in whole or in part, the Appellant at that time was entitled in a timely fashion to file a Notice of Appeal with the Commission and the Commission at that time would have jurisdiction to hear and determine that issue.

The Commission chair further stated that for these reasons the Commission panel had only jurisdiction to deal with the appeal relating to the reduction of the Income Replacement Indemnity benefits and no other issue.

In reply, [Appellant's representative] requested that an adjournment be granted for the Appellant to be given the opportunity to review the Indexed file. MPIC's legal counsel had no objection to the adjournment. The Commission panel therefore adjourned the appeal hearing and indicated to both parties that a new date would be set only to deal with the sole issue as to whether or not the Income Replacement Indemnity benefits were properly reduced to \$[text deleted] bi-weekly effective October 19, 2004.

The Commission panel noted that this hearing commenced at 9:30 a.m. and concluded at approximately 11:40 a.m. on March 29, 2006. Enclosed herein is a copy of Exhibits 1, 2 and 3 which were filed in these proceedings.

The Commission notes that the Appellant's representative, unfortunately, had not been properly prepared to represent the Appellant when he attended the appeal hearing on March 29, 2006.

The Appellant's representative had in 2003 represented the Appellant in respect of four (4) matters, and the Commission had issued a decision on July 15, 2003 dealing with these issues.

The Appellant's representative was therefore aware that during the course of the proceedings in

2003 before the Commission, the Commission had provided the Appellant with an Index of material of all of the relevant documents needed to hear the appeal in respect of these four (4) issues. It is therefore surprising to the Commission that the Appellant's representative attended the hearing on March 29, 2006, approximately two (2) years later, and was unaware that the Commission had issued a new Index containing all of the relevant documentary evidence in respect of the new appeal issue.

When the Appellant's representative was informed that he had the wrong Index material before him, the Commission panel invited the Appellant's representative to consider requesting an adjournment in order to properly review the Index material that had been filed in these proceedings, but the Appellant's representative surprisingly indicated that he wished to proceed with the appeal at that time without any further adjournment. Notwithstanding his position, the Commission panel recessed the proceedings in order to give the Appellant's representative an opportunity of consulting with his client in respect to this matter.

After the hearing was reconvened, the Appellant's representative indicated that he had consulted with his client and wished to proceed with the appeal hearing and then proceeded to set out four (4) grounds upon which the Commission was required to determine the appeal. The Commission spent the next two (2) hours attempting to explain to the Appellant's representative that the only jurisdiction that the Commission had to deal with was the issue of the reduction of the Appellant's IRI benefits and that the three (3) other issues that he raised relating to the termination of the Appellant's IRI benefits, the caregiver's allowance and the permanent impairment entitlement were not matters before the Commission at this time. At the conclusion of this process the Appellant's representative finally requested an adjournment in order to review the new Indexed material and an adjournment was granted.

**Appeal Hearing June 20, 2006**

On June 20, 2006 the Commission reconvened the appeal hearing.

At the commencement of this hearing the Commission panel requested the Appellant's representative to submit his legal argument which demonstrated that MPIC had erred in calculating the IRI benefits incorrectly which resulted in the reduction of these benefits to \$534.08 bi-weekly, effect October 19, 2004. The Appellant's representative initially submitted that the readjustment was unjust and unfair to the Appellant and that the Commission should rectify this matter by restoring the Appellant's IRI prior to the reduction. The Commission panel informed the Appellant's representative that the Commission could not reinstate the Appellant's IRI without evidence that there had been a misinterpretation and/or misapplication by MPIC of the Act or the regulations. The Commission further stated to the Appellant's representative that the Commission did not have the power to amend the legislation or regulations, but only had power to interpret these provisions and, as a result, the Commission could not provide a remedy to the Appellant on the grounds that the readjustment was unjust or unfair.

The Commission panel then invited the Appellant's representative again to submit his legal argument as to the incorrect manner in which MPIC had misinterpreted the provisions of the Act and/or Regulations or had miscalculated the Appellant's IRI which had resulted in the improper reduction of the IRI benefits to the Appellant. The Appellant's representative was unable to provide any legal argument to support a misinterpretation by MPIC of the Act and/or the regulations or an incorrect calculation of the amount of IRI payable to the Appellant. Instead, the Appellant's representative advised the Commission panel that the reason the Appellant was

appealing the decision of the Internal Review Officer was because the Appellant wished “enlightenment” as to the manner in which MPIC had arrived at this calculation.

The Commission panel pointed out to the Appellant’s representative that the case manager had written the Appellant on October 20, 2004 setting out by which the case manager had recalculated the Appellant’s IRI benefits and that the case manager’s decision had been confirmed by the Internal Review Officer in his decision dated December 15, 2004. The Commission panel asked the Appellant’s representative if he or the Appellant had ever contacted either the case manager or the Internal Review Officer to obtain clarification from MPIC as to the recalculation. The Appellant’s representative responded that no clarification had been sought by either himself or the Appellant.

The Commission panel further advised the Appellant’s representative that prior to seeking any assistance from the Commission as to clarification, the Appellant’s representative should seek a clarification from MPIC’s legal counsel and the Commission panel then recessed the hearing for that purpose.

Upon reconvening the hearing the Commission panel was advised by the Appellant’s representative, that having received clarification from MPIC’s legal counsel, he did not intend to make any submission to support the Appellant’s appeal.

The Commission panel notes that again the Appellant’s representative was not properly prepared to proceed with the hearing on June 20, 2006. The Appeal hearing was adjourned on March 29, 2006 in order to give the Appellant’s representative an opportunity of properly preparing for the appeal hearing. The Appellant’s representative had been provided with a copy of the Indexed

material at the March 29, 2006 hearing and therefore had ample opportunity before the appeal hearing on June 20, 2006 to obtain clarification from MPIC's legal counsel as to the manner by which MPIC had recalculated the IRI benefits, but he failed to do so. The Commission panel further notes that the Appellant's representative, upon receiving clarification from MPIC's legal counsel at the hearing on June 20, 2006, concluded that he was unable to establish that MPIC had erred in the recalculation of the Appellant's IRI benefits.

### **Decision**

The Commission panel indicated to the Appellant and her representative that:

1. the onus was upon the Appellant to establish, on a balance of probabilities, that MPIC had improperly reduced the Appellant's IRI benefits to \$[text deleted] effective October 19, 2004.
2. the Appellant had failed to meet the burden placed upon her because no submissions were made by the Appellant's representative to demonstrate that MPIC was in error in either misinterpreting the Act and/or the regulations, or in the manner in which they calculated the amount of IRI benefits payable to the Appellant.
3. as a result, the Commission confirms the decision of the Internal Review Officer, dated December 15, 2004, and dismisses the Appellant's appeal.

Dated at Winnipeg this 24<sup>th</sup> day of July, 2006.

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**MEL MYERS, Q.C.**

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**LES MARKS**