

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-138**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Mr. Wilf DeGraves
Mr. Les Marks

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

HEARING DATE: November 30, 2011 (via teleconference)

ISSUE(S):

1. Whether the Appellant is entitled to Income Replacement Indemnity benefits from December 9, 2008 to April 26, 2009.
2. Whether the Appellant is entitled to reimbursement for the MRI of his lumbar spine taken on January 15, 2009 and specifically whether the Appellant's low back symptoms are related to the motor vehicle accident of March 2, 2000.

RELEVANT SECTIONS: Sections 70(1), 71(1), and 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

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

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on March 2, 2000. Following the motor vehicle accident the Appellant attended at his family physician on March 7, 2000 with neck pain, radiating to the upper thoracic spine.

The Appellant's Initial Health Care Report from [Appellant's doctor #1] dated March 9, 2000, diagnosed that the Appellant had suffered a Whiplash Classification WAD II injury.

[Appellant's doctor #2] of the [text deleted] Clinic provided a Health Care Provider Progress Report to MPIC dated March 14, 2000, which indicated that the Appellant was unable to work as a long-distance truck driver because of a Whiplash WAD II injury.

[Appellant's doctor #3] provided an X-ray report (C-Spine) of the Appellant dated April 14, 2000 which stated:

“C SPINE:

Very slight posterior angulation is noted at the C5-6 level. The C5-6 disc space is narrowed with some sclerosis consistent with cervical spondylosis. No fractures are demonstrated.”

An X-ray report in respect of the Appellant's cervical spine taken on June 5, 2001 stated:

“The cervical is tilted a little to the right and there are fairly marked changes of disc degeneration at C5-6 where there has certainly been significant deterioration since the April, 2000 examination.

No other significant abnormality has become apparent in the interval.”

[Appellant's doctor #4] provided an Initial Health Care Report to MPIC dated June 14, 2001 which indicated that the Appellant was complaining of neck pain and [Appellant's doctor #4] indicated that the Appellant could not do his present job at the time which involved driving and lifting.

[Physiotherapy clinic] provided a report to MPIC dated June 25, 2001 where a comparison was made between the initial assessment notes from March 9, 2000 and June 15, 2001 which indicated that the areas requiring treatment were the same. The report further indicated that both

assessments revealed problems on the left side of the neck at C6-C7 with associated myofascial pain.

[Appellant's doctor #4] provided a report dated August 7, 2001 to MPIC's case manager indicating the Appellant had persistent worsening neck pain.

[MPIC's doctor #1], medical consultant with MPIC's Health Care Services, provided an interdepartmental memorandum to the case manager dated October 18, 2001 and indicated that:

1. He had reviewed the medical reports of the Appellant's physician dated June and August 2001 and the report from his physical therapist of June 2001.
2. A CT scan of the cervical spine was performed on June 18, 2001.
3. The Appellant presented with acute neck symptoms and paresthesia into the arm.

The Appellant's physician referred him to [Appellant's doctor #5] for an assessment. [Appellant's doctor #5] provided the Appellant's physician with a report dated November 29, 2001 and stated that upon examination of the Appellant, he concluded that the Appellant was suffering from chronic left-sided neck pain and evidence of left upper extremity radiculopathy.

On January 30, 2002 [Appellant's doctor #5] provided a report to MPIC's case manager indicating that:

1. He saw the Appellant on January 23, 2002 and reported that the Appellant was having ongoing cervical spine pain and ongoing bilateral paresthesia in his first, second and third fingers.
2. The Appellant requested that [Appellant's doctor #5] review the correspondence from [MPIC's doctor #1].

3. The correspondence from [MPIC's doctor #1] seemed reasonable.
4. It was the Appellant's opinion that his key complaint was not the arm pain but the continuous neck pain which he had since the collision.

[Appellant's doctor #5] further stated:

“Given the evidence at my disposal, and in my opinion on the balance or (sic) probability, V.F. has sustained a Whiplash-Associated Disorder Grade II secondary to the event in question. There appears to have been a relatively marked change in his degenerative disc disease at C5-6, secondary to the collision in question. This would be consistent with the eventual appearance of a C6 radiculopathy on the left side.” (underlining added)

MPIC's Internal Review Officer referred [Appellant's doctor #5's] report to [MPIC's doctor #1] for comment. In a report dated March 11, 2002 [MPIC's doctor #1] stated that:

1. The Appellant attended his primary care physician on June 7, 2000 relating to his neck pain.
2. There were no subsequent clinical visits related to the neck pain until June 7, 2001.
3. The Appellant's physician commented during a telephone conversation with [MPIC's doctor #1] that the Appellant continued to experience neck pain between the period between June 2000 and June 2001.
4. The Appellant did not continue to present for clinical assistance since he had already received treatment to return to work (he had reached the plateau).
5. In his opinion it was not clear that the acute radiculopathy, likely associated with the cervical disc herniation, was directly attributable to the motor vehicle accident.
6. Based on the medical information reviewed it was his opinion that the motor vehicle collision of March 2, 2000 is related to ongoing neck pain.

The Commission notes that the documents contained in the indexed material filed in evidence at the appeal hearing indicated in respect of the Appellant:

1. He attended for physiotherapy from November 25, 2003 to February 29, 2004.
2. He presented with a history of chronic neck pain increasing over the previous six months.
3. The Appellant attended for seven additional physiotherapy appointments between March 13 and May 22, 2004.

[Appellant's doctor #5] assessed the Appellant on June 29, 2004 at which time ongoing neck pain and stiffness were reported. Throughout this time the Appellant continued to work as a semi-truck operator driving long distances and lifting heavy weights. The Appellant continued to receive physiotherapy treatments through July and August 2004 and continued with symptoms and signs related to his cervical and upper thoracic area.

On October 27, 2004, a CT scan of the cervical spine was undertaken. At C5-C6 degenerative disc disease was noted with bilateral neural foraminal bony encroachment and borderline spinal stenosis. Focal left posterolateral endplate spurring was noted at the C6-C7 level associated with neural foraminal narrowing.

On June 2, 2005, [MPIC's doctor #1] reviewed the medical information on file and expressed the opinion that there was no medical documentation that contradicted the opinions provided by the Appellant's treating practitioners that his chronic neck pain had developed as a result of the motor vehicle accident.

On September 12, 2005 [Appellant's doctor #5] advised MPIC that the Appellant continued to report neck and upper back pain.

[Appellant's doctor #4], who had treated the Appellant since 2000, issued a number of chart notes which detailed the purpose of the Appellant's attendance between March 14, 2000 and September 27, 2004. These chart notes indicated the following:

- On March 14, 2000 the Appellant has had problems with a sore neck since the motor vehicle accident.
- On March 24, 2000 there is improvement but there is still neck discomfort.
- April 13, 2000 neck pain
- June 7, 2000 neck still sore
- June 7, 2001 neck continues to be stiff
- July 30, 2001 neck continues to be painful
- August 24, 2001 – neck
- October 15, 2001 – neck pain persists
- October 26, 2001 – Appellant suffering exacerbation of his neck pain related to the motor vehicle accident approximately 2 yrs. ago. Work involves heavy lifting and long distance driving.
- July 22, 2002 – persistent neck pain
- November 29, 2002 – sore neck and back – “In with chronic neck problem and back problem which he claims is due to an MVA a couple of yrs. ago.”
- September 8, 2003 – presented with recent twisting injury and lower back discomfort without any radicular type pain.
- July 9, 2004 – neck pain
- July 19, 2004 – severe neck pain
- September 7, 2004 – chronic neck pain

- September 27, 2004 – spine problems, seen doctors in [text deleted] for back and neck pain

[Appellant's pain specialist], the pain specialist, reported to MPIC on August 14, 2005 as follows:

- **“MAIN COMPLAINTS**
- His main complaints at present are neck, back and left arm pain. At the time of my assessment he mentioned that the worst pain was in his low back.” (underlining added)

[Appellant's doctor #4] also provided chart notes in respect of the Appellant's visits between May 30, 2005 and January 2, 2007 as follows:

- May 30, 2005 – the Appellant complained about back pain. He reported that the back pain had been bothering him for the last number of weeks and that he was using Statex on an occasional basis.
- July 18, 2005 – the Appellant complained of back pain in the lumbar area.
- October 13, 2005 – the Appellant complained of right leg pain into his back. The pain is worse in the a.m.
- October 25, 2005 – the Appellant complained of neck pain.
- November 22, 2005 – the Appellant complained of neck pain and shooting pain from his right foot up his right leg.
- December 16, 2005 – the Appellant complained of neck pain.
- January 19, 2006 – the Appellant complained about pain in his low back.
- January 24, 2006 – the Appellant complained that both his back and neck were bothering him.
- February 27, 2006 – the Appellant complained of neck pain.

- April 4, 2006 – the Appellant complained of cervical spine and occasional neck pain.
- May 24, 2006 – the Appellant complained of neck and back pain.
- June 15, 2006 – the Appellant complained of back pain.
- January 2, 2007 – the Appellant complained of back pain.

On March 8, 2007 [MPIC's doctor #2], medical consultant with MPIC's Health Care Services, was requested to provide an opinion on whether or not there was a connection between the Appellant's relapse in 2001 and 2004 and the injuries sustained in the motor vehicle accident. After extensively reviewing all of the medical reports from other healthcare providers, [MPIC's doctor #2] concluded that the injuries the Appellant sustained to his neck were causally connected to the Appellant's relapse in 2001 and 2004.

On March 12, 2007 [Appellant's chiropractor], a chiropractor, provided a report to MPIC indicating that the Appellant had been complaining of neck pain and low back pain and he indicated that he provided chiropractic treatments to the Appellant.

MPIC's case manager wrote to [MPIC's chiropractor], MPIC's chiropractic consultant, and informed him that the Appellant had received 35 treatments as of July 10, 2007. The case manager requested [MPIC's chiropractor] to review the most recent report from the chiropractor, [Appellant's chiropractor] of March 12, 2007 and advise whether the treatments were medically required and causally, related to the injuries sustained in the motor vehicle accident. [MPIC's chiropractor] provided a handwritten response to MPIC dated August 21, 2007 and stated:

“There is (sic) no early reports of LBP (lower back pain), and so in my opinion insufficient evidence to relate the low back pain reported by [Appellant's chiropractor] to the MVA. (underlining added)

However, the relationship of chronic neck pain has been accepted by [MPIC's doctor #2] in her review of March 8/07. In view of this and the fact that chiropractic treatment has not been attempted, in my opinion a trial of chiropractic is both related & medically required."

Case Manager's Decision – August 31, 2007:

On August 31, 2007 the case manager sent a decision letter explaining the Appellant's two year determination as a short haul truck driver. This decision stated that the Appellant was capable of holding the position of a short haul truck driver however, as the income from this job would be less than that of his pre-accident job as a long haul truck driver, he would be entitled to IRI top up after his one year job search. This decision letter is not at issue on this appeal.

[Appellant's doctor #6] saw the Appellant in the months of December and February 2009 in respect of the Appellant's complaints relating to his neck and lower back pain and numbness affecting his left fingers. As a result of these meetings, [Appellant's doctor #6] issued two medical notes in respect of the Appellant's employment. The first note on December 9, 2008 indicated the Appellant was "unfit for work for medical reasons for 2 months". The second note dated February 26, 2009 indicated that the Appellant was seen on that date and that he was "unfit for work for 2 months & for review at that time". [Appellant's doctor #6] also ordered MRI's in respect of the Appellant's neck and lower back.

MPIC received an MRI report in respect of the Appellant's back dated January 15, 2009 from the [text deleted]. This reported stated:

"Findings:

There is varying degrees of mild degenerative disc disease from C3-C4 down to C6-C7 as evidenced by varying degrees of loss of disc height with disc bulging and marginal osteophyte formation.

At C3-C4: These aforementioned degenerative changes combined with some early degenerative change in the posterior facets result in mild bilateral neural foraminal stenosis. No disc protrusion or central canal stenosis.

Ac C4-C5: These aforementioned degenerative changes in the disc space and in the posterior facets result in moderate bilateral neural foraminal stenosis. There is no disc protrusion or central canal stenosis.

At C5-C6 and C6-C7: These aforementioned degenerative changes result in mild bilateral neural foraminal stenosis. Again, no disc protrusion or central canal stenosis.

The remaining levels of the cervical spine are within normal limits.

The sagittal STIR sequence demonstrates no evidence of bone marrow or paracervical soft tissue edema.

Impression:

1. Multilevel degenerative disc disease with some early facetar osteoarthritis at L4-L5. If felt to be of benefit, we could perform a fluoroscopic guided injection of steroid and Marcaine into the posterior facets at this level. This procedure is available at our facility and covered by [text deleted].”

The Appellant submitted [Appellant’s doctor #6’s] two medical notes to MPIC and requested that he be paid IRI benefits for the four month period covered by these two notes. The Appellant also submitted an invoice to MPIC for the MRI’s of his lumbar spine and cervical spine and requested payment of \$775.00 for each of the MRI’s.

The case manager wrote to [Appellant’s doctor #6] on March 16, 2009 and requested that he provide the objective medical reasons that rendered the Appellant incapable of working and whether in his opinion these medical reasons were related to the motor vehicle accident of March 2, 2000.

In response, [Appellant’s doctor #6] wrote to MPIC’s case manager on March 20, 2009 and stated that the Appellant was seen for the first time in December 2009 and presented with a

history of chronic neck and lower back pain and numbness affecting his left fingers. [Appellant's doctor #6] referred the Appellant for an MRI cervical and lumbar spine to exclude disc protrusion with nerve root impingement on December 9, 2008. [Appellant's doctor #6] further stated:

“While it is possible, I find it difficult to directly link his motor vehicle collision of March 2000 with his current symptoms.” (underlining added)

[Appellant's doctor #6] also provided a copy of the Appellant's MRI cervical and lumbar spine in his letter to the case manager and stated that in his opinion it was prudent for the Appellant to avoid any potentially exacerbating work situations. He therefore provided a note to the Appellant dated December 9, 2008 which stated:

“His MRI report was received at the end of January 2009 (copy attached). The findings were discussed with [the Appellant]. MRI report showed degenerative disc disease of the lumbar and cervical spine and moderate bilateral foraminal stenosis at C4-5. No clinical features of C5 radiculopathy was demonstrated on assessing the patient.”

[Appellant's doctor #6] also indicated that a second note was given to the Appellant on February 26, 2009 to allow participation in physical therapy treatment for a 6-8 week period and stated:

“In my opinion, I do not think the motor vehicle collision of March 2000 is a direct cause of his current symptoms.” (underlining added)

In response to a request from the case manager [MPIC's doctor #2], Medical Director of MPIC's Health Care Services, commented on the following matters on June 8, 2009:

1. “Was the need for a cervical spine MRI causally related to the MVA of March 2000: If so, provide explanation.
2. Was the need for a lumbar spine MRI causally related to the MVA of March 2000: If so, provide explanation.
3. ...

4. ...”

In a decision dated July 14, 2010 the Internal Review Officer reviewed [Appellant’s doctor #6’s] report of March 20, 2009 and stated:

“However, [Appellant’s doctor #6] concluded “I do not think the motor vehicle collision of March 2000 is a direct cause of his current symptoms.”

The Internal Review Officer also reviewed [MPIC’s doctor #2’s] medical report of June 8, 2009 and stated:

“A medical consultant working with MPI’s Health Care Services provided an opinion on June 8, 2009 on the need for both MRIs and whether the motor vehicle accident related injuries make your client incapable of working. The consultant noted the opinions previously provided that the cervical symptoms were thought to be related to the motor vehicle accident and noted the chiropractor consultant’s opinion in August of 2007 that your low back pain was not related to your March 2000 motor vehicle accident.

The consultant continued that the cervical spine MRI requested by [Appellant’s doctor #6] has identified multi-level degenerative changes which at the C3-C5 level involved the posterior facet joints as well. It is noted that there is no radiological evidence of disc herniation or central canal stenosis. The consultant does note that [Appellant’s doctor #6] has provided the opinion that he does not feel the motor vehicle collision of March 2000 is a direct cause of your client’s current symptoms. The consultant concludes that the MRI of the cervical spine, at the time it was initiated, could have related to your motor vehicle collision and as such it was likely medically indicated at that time.

The consultant then stated that there is no evidence, which has been stated throughout your client’s medical file, that he sustained a lumbar spine injury as a result of his motor vehicle accident of March of 2000 and therefore the undertaking of a lumbar MRI does not relate to the March, 2000 collision.

Finally, the consultant relied on [Appellant’s doctor #6’s] report and advised that as your client’s current symptoms do not relate to the motor vehicle collision of 2000 any inability he has to work also does not relate to that collision.” (underlining added)

Case Manager’s Decision – July 8, 2009:

The case manager wrote to the Appellant on July 8, 2009 and stated that a report was requested from [Appellant’s doctor #6] regarding entitlement to reimbursement for MRI’s and he stated:

“Based on [Appellant’s doctor #6’s] report and a review from Manitoba Public Insurance’s Health Care Services team the following is opined:

- “The MRI of the cervical spine, at the time it was initiated, could have related to sequelae of the motor vehicle collision. As such, pursuing the cervical MRI was likely medically indicated at the time.” Therefore, we will cover the cost of \$775 for the MRI of the cervical spine. The cheque in this amount has been processed.
- Regarding the lumbar spine MRI, “there is no evidence that a lumbar injury occurred as a result of the collision of March 2, 2000. “As such, the undertaking of a lumbar MRI does not relate to the March 2000 collision.” Therefore, the expense for the MRI of the cervical spine will not be reimbursed.
- Your inability to work also does not relate to the motor vehicle collision of March 2000. Therefore, there is no entitlement to additional IRI benefits during the time frames noted in [Appellant’s doctor #6’s] medical notes.”

The Appellant filed an Application for Review dated December 16, 2009 together with a letter from his solicitor, [text deleted], who practices law in [text deleted]. In his letter dated January 4, 2010, [Appellant’s solicitor] stated:

“We disagree that the lower back pains, which were not initially specifically referred to, were not a consequence of the accident. We believe that when “back” pains are referred to by a complainant, that the average claimant does not necessarily refer to one part or another of the back but to his/her whole back.

Internal Review Officer’s Decision:

On July 14, 2010 the Internal Review Officer issued her decision and indicated that after a telephone hearing with the Appellant’s legal counsel on April 21, 2010, she had completed her Internal Review of the case manager’s decision of July 10, 2009 and stated:

“REVIEW DECISION

Having reviewed your client’s entire file, I am confirming the case manager’s decision that your client is entitled to reimbursement for a cervical MRI but not for a lumbar spine MRI. As well, I am confirming the decision denying your client’s request for four months IRI (December 12, 2008 to April 26, 2009).

REASONS FOR DECISION

From my review of the file and from our discussion at the Internal Review Hearing, it is clear to me that you wished to discuss your client's entire file with MPI. However, as I stated at the hearing, the only issues that I can deal with are the lumbar spine MRI and [Appellant's doctor #6's] recommendations for your client to be off work for a four month period of time from December, 2008 to April, 2009.

My review of the file reveals that the lumbar spine pain, first reported in 2007 is not related to the March, 2000 motor vehicle accident and therefore the lumbar MRI will not be funded by Manitoba Public Insurance.

[Appellant's doctor #6], the physician who recommended that your client be off work for a total of four months, provided his opinion that your clients' current symptoms are not related to the motor vehicle accident. As well, the medical consultant's review also concluded there was no relation of symptoms to the motor vehicle accident. As a result, there is no entitlement to IRI benefits for that recommended period of time off work."

Notice of Appeal:

The Appellant filed a Notice of Appeal on October 7, 2010 and attached thereto was a written submission from his solicitor which stated:

"There is ample evidence that there were some references to 'lower back' problems the claimant suffered from as early as the year 2004. There were prior references to back problems.

There should be no cost to the claimant for having this lower back problem investigated. Statements from various sources are clear that the accident had affected the claimant and to hold the claimant liable to pay for an MRI which may have had negative injuries were required to be investigated. There is evidence that the lumbar problems could have been caused by the accident.

Whether the injuries were the direct result of the accident or whether there was an aggravation of the injuries suffered by the claimant, as a result of working on short haul trucks and lifting and setting down his freight, is not clear, but more than possible. Where an injury is investigated but not found to be connected to the accident, does not mean that a claimant is liable to pay for those medical procedures. The MRI for the lower back should have been part of the general cost for handling the claim by MPI."

The relevant Sections of the MPIC Act provide:

Definitions

[70\(1\)](#) In this Part,

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

"bodily injury" means any physical or mental injury, including permanent physical or mental impairment and death;

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load,

Application of Part 2

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

Reimbursement of victim for various expenses

[136\(1\)](#) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Appeal Hearing:

The hearing commenced on November 30, 2011 in Winnipeg. In attendance was Mr. Andrew Robertson, legal counsel for MPIC. The Appellant and his counsel, [text deleted], participated by way of teleconference from [text deleted].

Neither party called any witnesses.

Submissions:

The Appellant's legal counsel asserted that:

1. As a result of the motor vehicle accident of March 7, 2000 the Appellant suffered injuries to his neck but also to his lower back.
2. There was ample evidence to support the Appellant's position that he suffered a low back injury as a result of the motor vehicle accident, which in due course developed into chronic pain and which required [Appellant's doctor #6] to provide two medical notes stating the Appellant was not to work between December 9, 2008 and April 26, 2009.
3. Prior to the motor vehicle accident the Appellant did not have back problems and that these back problems commenced after the motor vehicle accident.
4. MPIC erred in refusing to reimburse the Appellant for the MRI in respect of his back problems which adversely affected the Appellant's ability to work.
5. The back injury was a direct result of the motor vehicle accident and that his injuries were exacerbated by the nature of the Appellant's employment as a short-haul trucker who was required to lift and carry heavy freight parcels.
6. Since the back injury affected the Appellant's ability to work, he was entitled to have the problem investigated in order to establish a causal connection between the motor vehicle accident and the Appellant's back problems in order to obtain reimbursement of the MRI costs from MPIC.

The Appellant's legal counsel therefore submitted that MPIC erred in failing to pay the Appellant IRI benefits and the cost of the MRI in respect of his back. He requested that the appeal be allowed and the Internal Review Officer's Decision be rescinded.

MPIC's legal counsel reviewed the medical reports from the Appellant's caregivers as well as the reports of [Appellant's doctor #5], [MPIC's doctor #2], [MPIC's doctor #1] and [Appellant's doctor #6] and submitted:

1. The medical evidence established a causal connection between the Appellant's injury to his neck and the motor vehicle accident.
2. The medical evidence did not establish a causal connection between the motor vehicle accident and the injury to the Appellant's back.
3. [Appellant's doctor #4], the Appellant's physician, recorded a number of chart notes of his treatment of the Appellant between March 14, 2000 and September 27, 2004 and these notes clearly indicate the Appellant was only complaining of neck pain.
4. [Appellant's doctor #4's] chart notes for the period between May 30, 2005 and January 2, 2007 indicate the Appellant commenced complaining about his back pain on a sporadic basis, a period of five years after the motor vehicle accident.
5. [MPIC's doctor #1] and [MPIC's doctor #2], consultants with MPIC's Health Care Services, both concluded after a review of all of the medical reports that there was no causal connection between the Appellant's back problems and the motor vehicle accident and this was confirmed by [Appellant's doctor #5], who assessed the Appellant at the request of his physician.
6. The first indication that MPIC had of the Appellant's back complaints was on March 12, 2007 (a period of seven years after the motor vehicle accident), when [Appellant's chiropractor], the chiropractor, requested reimbursement of chiropractic treatments to the Appellant's back.
7. [MPIC's chiropractor] was correct in rejecting the Appellant's request for reimbursement of chiropractic treatments on the grounds there was insufficient evidence to establish a causal connection between the low back pain and the motor vehicle accident.
8. [Appellant's doctor #6], the Appellant's physician, in a report to MPIC advised that the motor vehicle accident of March 2, 2000 was not a direct cause of the Appellant's back pain.

MPIC's legal counsel therefore submitted that the appeal be dismissed and the Internal Review Officer's Decision of July 14, 2010 be confirmed.

Discussion:

The Commission finds that MPIC correctly determined, on the balance of probabilities, that there was no causal connection between the Appellant's low back pain and the motor vehicle accident of March 2, 2000. As a result, MPIC was justified in rejecting the Appellant's request for reimbursement of the cost of the MRI in respect of his cervical spine in the amount of \$775 and his entitlement to IRI benefits for the period December 9, 2008 and April 26, 2009.

The Commission rejects the submission of the Appellant's legal counsel that there was medical evidence that the Appellant initially complained about back pain arising out of the motor vehicle accident and that the back pain was ignored by MPIC. The Commission finds that:

1. The medical evidence clearly demonstrated that the Appellant initially complained about his neck pain arising out of the March 2, 2000 motor vehicle accident.
2. The Appellant was examined by [Appellant's doctor #1] on March 9, 2000 who diagnosed that the Appellant was suffering from Whiplash Classification WAD II injury.
3. There was confirmation of this diagnosis by [Appellant's doctor #2] on March 14, 2000 and by [Appellant's doctor #4] on June 14, 2001 and August 7, 2001 and by [Physiotherapy clinic] on June 15, 2001.
4. MPIC's Health Care Services consultants, [MPIC's doctor #2] and [MPIC's doctor #1], both confirmed on review of the medical reports that the Appellant suffered from neck pain only.

5. This diagnosis was confirmed by [Appellant's doctor #5] who was requested by the Appellant's physician to assess the Appellant.
6. [Appellant's doctor #4], who treated the Appellant, submitted a number of chart notes in respect of his attendance for treatment and he noted the Appellant's complaints at each visit from March 14, 2000 to September 27, 2004.
7. The only consistent complaints made by the Appellant on these visits were of neck pain.
8. [Appellant's doctor #4's] chart notes indicate that the Appellant commenced to complain of back pain on a sporadic basis on May 30, 2005, a period of five years after the motor vehicle accident and continued to complain about his back pain on July 18, 2005, October 13, 2005, January 19, 2006, January 24, 2006, May 24, 2006, June 15, 2006 and January 2, 2007.

[Appellant's doctor #4's] chart notes clearly establish that the first time the Appellant complained of back pain was on May 30, 2005, a period of five years from the motor vehicle accident. The Commission finds that a lapse of five years from the date of the motor vehicle accident and the Appellant's complaint of back pain on May 30, 2005 clearly demonstrates that there was no causal connection between the Appellant's back pain problems and the motor vehicle accident.

The Commission also notes that the first time MPIC received notice of the Appellant's back complaints was in a report from [Appellant's chiropractor] on March 27, 2007, a period of approximately seven years after the motor vehicle accident.

The Commission further notes that [MPIC's chiropractor], MPIC's chiropractic consultant, correctly determined that MPIC was not required to reimburse the Appellant for chiropractic

treatments since there was insufficient evidence to relate the low back pain with the motor vehicle accident. The Commission further notes that the Appellant's own physician, [Appellant's doctor #6], who provided the two notes for leave of absence from work and who ordered an MRI of his back clearly stated:

"In my opinion, I do not think the motor vehicle collision of March 2000 is a direct cause of his current symptoms." (underlining added)

The Commission therefore finds that the Appellant has failed to establish on a balance of probabilities that there is a causal connection between the motor vehicle accident and his back pain. There is no medical evidence to establish that the motor vehicle accident caused or materially contributed to the Appellant's back pain. For these reasons the Commission dismisses the Appellant's appeal and confirms the Internal Review Officer's Decision dated July 14, 2010.

Dated at Winnipeg this 26th day of January, 2012.

MEL MYERS, Q.C.

WILF DEGRAVES

LES MARKS