

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-162**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Mary Lynn Brooks
Ms Leona Barrett

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf assisted by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: March 6, 2013

ISSUE(S): Entitlement to Reimbursement of Various Expenses;
Entitlement to Permanent Impairment Benefits;
Entitlement to Income Replacement Indemnity Benefits.

RELEVANT SECTIONS: Sections 81(1), 85(1), 127, 131 and 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(a) of Manitoba Regulation 40/94.

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

Facts and Background:

The Appellant has been involved in several motor vehicle accidents which form the background of her appeals.

On November 5, 2001, the Appellant was the seat-belted driver of a vehicle that was coming to a stop at a traffic light when she was rear-ended by a van travelling at a relatively rapid speed. Due to the accident, the Appellant had significant symptoms related to whiplash and began

experiencing dizziness, numbness, tingling, headaches, and her vision and balance were affected. Because of the symptoms she experienced at that time, including severe pain, numbness, tripping and falling, her family practitioner wondered if she had multiple sclerosis and referred her to a neurologist. She underwent an MRI and the result was negative for MS. Shortly after the motor vehicle accident, in December 2001, she had a [text deleted] (which had been planned for some time) to treat her [text deleted]. She was off work until March 2002. At the time of this motor vehicle accident, the Appellant was employed at [text deleted] on a full-time basis as a senior underwriter. She returned to work at [text deleted] on March 4, 2002. However, her employment with [text deleted] was terminated on July 9, 2002. The Appellant submits that this was because of ongoing physical pain and limitations that caused her to arrive late for work, leave early and not be very productive while she was at work. She received a severance package from [text deleted] which lasted until October 15, 2002. Thereafter, the Appellant collected employment insurance benefits until April 2003. She did return to work as a [text deleted] in June 2003, but the Appellant testified that she could not maintain the physical demands of the job and stopped after one month.

On November 25, 2003, while still off work due to her physical problems, the Appellant was involved in a second car accident when she was a passenger in a taxi that lost control on an icy patch causing the vehicle to hit the centre guardrail. As a result of this accident, the Appellant reported whiplash and bumps and bruises to the left side of her forehead as a result of hitting the plastic partition (inside the taxi) with her head. She also reported lower and mid back pain. This caused her condition to deteriorate and further medical care was involved and ongoing.

In November 2003, she came under the care of [Appellant's doctor #1] and she testified that he was the first physician who listened to her about the significance of her problems. Her condition

improved dramatically. She returned to work as a [text deleted] for one month, that being from December 2003 to January 2004. During this time, the Appellant was assigned work from December 29, 2003 to January 2, 2004 at [text deleted] and from January 5 to 28, 2004 at [text deleted].

Subsequently she applied for and obtained employment with [text deleted] and was planning to start in [text deleted] when she was involved in a third accident. On February 20, 2004, the Appellant was a seat-belted driver of a vehicle that was hit from behind while stopped. Between March 1, 2004 and May 13, 2004 the Appellant was employed as a [text deleted]. She tried to push on with her job, as if the accident had not happened, but found that her abilities to do so were limited and she was subsequently let go. A position at [text deleted] ended for similar reasons.

On August 18, 2004, the Appellant was hired full-time by [text deleted] and became a [text deleted]. In 2005 – 2006 she began a course at [text deleted] which she took part-time while continuing to work at [text deleted]. She graduated from the course in June 2007 with a [text deleted] diploma, receiving honours.

The Appellant was then involved in another accident on June 21, 2007 when she was rear-ended while coming to a stop at a red light. The pain that resulted from her June 2007 motor vehicle accident was more manageable and it was resolved within a reasonable period of time. In January 2007 she had been assessed at the [Clinic #1] and referred to the [Clinic #2] where she saw [Appellant's doctor #2]. From that point on, the Appellant testified that her treatment improved a lot. At the [Clinic #1], her medications were changed and she was referred to a psychiatrist, [Appellant's psychiatrist], who did needling and she found that these combined

treatments helped her pain level to subside. She did better at work and more activities at home and she didn't have to push herself as hard as she had previously. [Appellant's doctor #2] provided a diagnosis of fibromyalgia and myofascial pain syndrome, and [Appellant's physiatrist] concurred with these diagnoses.

In September 2009 she was involved in another motor vehicle accident which caused her pain to worsen significantly. She experienced a marked increase in her pain, which she testified took her back to November 2001 when she had severe whiplash. At the appeal hearing the Appellant testified that in January 2012, after an unfavourable performance appraisal, she went on short-term/long-term disability benefits before she was fired from her position. At the time of the appeal hearing, the Appellant was still on LTD benefits from her employer, [text deleted].

Issues Under Appeal:

The Appellant has appealed several Internal Review decisions regarding various issues arising from her motor vehicle accidents. A hearing into the Appellant's several appeals was held by the Commission on March 6, 2013. The Appellant testified at the hearing. In addition, the Commission referenced extensive written documentation including medical reports from physicians, chiropractors and various caregivers. The following appeals were considered by the Commission and are discussed below:

ISSUES	INTERNAL REVIEW DECISION
1. Entitlement to reimbursement of expenses related to the purchase of Primrose Oil; Laser Aculite treatments, Shiatsu Malaxant/Foot and Neck Massager, Shangri-la Magnetic Healing Device.	July 13, 2005
The appeal of this Internal Review decision was withdrawn by the Appellant at the appeal hearing of March 6, 2013.	

2. Entitlement to funding for a gym membership;
Entitlement to funding for personal care assistance. July 13, 2005
3. Entitlement to reimbursement for the following medications:
Premarin, Stievamycin Gel, Erysol Gel, Sulfatrim DS,
Domperidone, Amoxicillin, Norfloxacin, Phenazopyridine,
Zyban, Cortisporin Eye/Ear Susp, Cloxacillin, Ciprofloxacin;
**The Appellant withdrew the appeal of this issue at the
appeal hearing of March 6, 2013.** July 14, 2005
- Entitlement to reimbursement for headache related
medications;
**The Appellant withdrew the appeal of this issue at the
appeal hearing of March 6, 2013.**
- Entitlement to Personal Injury Protection Plan benefits for
inner ear damage.
4. Entitlement to Income Replacement Indemnity benefits from
April to October 2003. August 5, 2005
5. Entitlement to reimbursement in the amount of \$2,500.00 paid
in Income Tax to cash in RRSPs; February 6, 2006
- Entitlement to reimbursement in the amount of \$4,000.00 for
legal fees;
- Entitlement to reimbursement in the amount of \$4,000.00 for
penalties sustained in cashing in RRSPs;
- Entitlement to permanent impairment benefits for nerve
damage to the left arm.
6. Entitlement to Income Replacement Indemnity benefits for
June 26 and 27, 2007. October 26, 2007
- The Appellant withdrew the appeal of this issue at the
appeal hearing of March 6, 2013.**
- Entitlement to Income Replacement Indemnity benefits from

November 25, 2003 to August 17, 2004.

Discussion:

2. Entitlement to funding for gym membership and Personal Care Assistance Benefits

On April 20, 2004, MPIC's case manager issued a decision regarding the Appellant's entitlement to funding for a gym membership and personal care assistance benefits.

Regarding the gym membership, the case manager advised that:

Gym Membership

You advised that your doctor, [Appellant's doctor #1], told you to increase your physical activity and that attending the gym would be beneficial. You advised that you had been an active member of other gyms in the past.

In order for us to consider funding for gym membership, it must be specifically prescribed by your medical doctor, and must be medically required in the rehabilitation of your motor vehicle accident injuries. I refer you to Section 5(a) of the Manitoba Regulation 40/94 (copy attached).

Your doctor has provided a report (copy attached) indicating he recommended you should increase your level of activity, but did not specifically prescribe a gym membership as a medical requirement. I had [Appellant's doctor #1's] report reviewed by our Health Care Services Consultant and while they concur with [Appellant's doctor #1], that it is a medical recommendation that you increase your activity level, a gym membership is not supported as a medical requirement (copy attached). Your activity level can be increased without the necessity of a gym membership; therefore there is no entitlement to expenses for a gym membership. I am returning your [text deleted] Membership Agreement and schedule cards.

With regards to the Appellant's request for personal care assistance benefits, the case manager advised the following:

You have requested your neighbor be paid for the services he has provided to you from July 01, 2003 (which predates this motor vehicle accident) up to the present date. In order to determine your entitlement to Personal Care Assistance Expenses, I attended [Appellant's neighbor's] residence and obtained a statement (copy attached). Based on [Appellant's neighbor's] statement of services he has provided you, I have completed a personal Assistance Expenses Worksheet in accordance with Schedule 1 and 2 of Manitoba Regulation 40/94 (copies attached).

The Evaluation Grid provides a “checklist” which allows for a point value to be assigned to an individual’s functional impairment in order to qualify for an entitlement to Personal Care Assistance expenses. A minimum grid score of 5 points is required in order to qualify for an entitlement to Personal Care expenses. Your Personal Assistance Grid score was 1.5 points out of a possible 51 points resulting in no entitlement to Personal Care Assistance expenses.

[Appellant’s neighbor] confirmed that there was no agreement for you to pay him for the services he provided you, nor has he received any compensation from you in this respect.

The Appellant disagreed with the case manager’s decision and sought a review of that decision. In a decision dated July 13, 2005, the Internal Review Officer dismissed the Appellant’s Application for Review and confirmed the case manager’s decision. With respect to the issues under review, the Internal Review Officer found that:

- i) Since the medical information on your file does not indicate that a gym membership is medically required as a result of injuries related to your accident of November 25, 2003, I must confirm your Case Manager’s decision; and
- ii) Since you scored below the minimum score of 5 before one is entitled to the reimbursement of Personal Care Assistance expenses, you are not entitled to this benefit. In addition, you are not entitled to this benefit as you have not established that you have incurred any expenses in this regard.

The Appellant has appealed that decision to this Commission. The issues which require determination on this appeal are:

1. whether the Appellant is entitled to funding for a gym membership; and
2. whether the Appellant is entitled to funding for personal care assistance.

The Appellant submits that she was told by her caregivers to keep active and that exercise is very important for the treatment of fibromyalgia. The Appellant confirmed that although her gym membership was not approved by MPIC, she did attend a gym for physical exercise and paid the membership fees out of her own pocket. The Appellant advised that she attended

[text deleted] in order to carry out an exercise program and to rehabilitate from her injuries on her own. The Appellant submits that the requirement for the gym membership was due to the injuries resulting from the combined effects of her various motor vehicle accidents and accordingly she should be entitled to reimbursement for the expenses which she has incurred over the years.

With respect to her entitlement to personal care assistance benefits, the Appellant argues that due to her motor vehicle accidents, she is unable to lift and carry many items as she did prior to her accidents. She also trips and falls easily. She no longer does her laundry and various other home maintenance tasks as she contends that she is physically unable to carry out those activities. The Appellant indicated that prior to her marriage, her neighbour gratuitously assisted her with many of the chores around her home. The Appellant feels that her neighbour should be compensated for his efforts. The Appellant advised that her husband now does many of the home maintenance tasks that she is no longer able to do on her own. She submits that she should be entitled to personal care assistance benefits since her injuries prevent her from carrying out the home maintenance tasks on her own.

Counsel for MPIC argues that MPIC carefully considered whether the Appellant qualified for reimbursement of her expenses for a gym membership. He refers to [MPIC's doctor #1's] interdepartmental memorandum dated February 11, 2004, wherein [MPIC's doctor #1] indicated that in order to approve a gym membership, there needs to be a medical prescription specifically outlining the nature of the gym exercises to be conducted in the gym. Further the condition in question needs to have medical evidence which indicates that specific gym-based exercises are medically required in terms of a rehabilitation program. Counsel for MPIC indicated that [MPIC's doctor #1] noted that he could not identify a

prescription for any particular exercise at the gym in question and the performance of aerobic exercises would not be a medical requirement in the treatment of neck or back whiplash. He further concluded that aerobic exercises do not need to be performed at a particular exercise facility. Counsel for MPIC argues that although [Appellant's doctor #1] indicated that the Appellant should increase her level of activity, he did not specifically prescribe a gym membership for treatment of the Appellant's myofascial pain. Further [Appellant's doctor #1] wrote that he did not think there were any specific exercises that he would recommend. Counsel for MPIC argues that since the medical information on the Appellant's file does not indicate that a gym membership is medically required as a result of the injuries related to her accident of November 25, 2003, her appeal should be dismissed.

With respect to the Appellant's claim for personal care assistance benefits, counsel for MPIC argues that an individual must score a minimum of 5 points to be eligible for personal care assistance benefits. Counsel for MPIC argues that since the Appellant scored below the minimum score of 5 points, she is not entitled to this benefit. Additionally, counsel for MPIC submits that the Appellant is not entitled to personal care assistance benefits as she has not established that she has incurred any expenses in this regard. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision of July 13, 2005 should be confirmed.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that:

1. the Appellant is not entitled to reimbursement of her expenses for a gym membership;
and
2. the Appellant is not entitled to personal care assistance benefits.

The Commission finds that the Appellant did not establish, on a balance of probabilities, that a gym membership was medically required as a result of injuries related to her accident of November 25, 2003. The Commission accepts [MPIC's doctor #1's] medical opinion that there needs to be a medical prescription for particular gym exercises to be conducted in the gym and that specific gym based exercises are medically required in terms of the rehabilitation program. The Commission finds that in this case, the medical information on the Appellant's file does not indicate that a gym membership was medically required as a result of injuries related to her accident of November 25, 2003.

The Commission finds that the Appellant did not establish, on a balance of probabilities, that she qualified for personal care assistance benefits. A claimant must score a minimum of 5 points to be eligible for personal care assistance benefits. The evidence before the Commission establishes that on January 13, 2004 a Personal Assistance Expenses Worksheet was completed, wherein the Appellant scored a total of 1 out of a possible 51 points on the grid at that time. On March 19, 2004 another Personal Assistance Expenses Worksheet was completed, using information from the Appellant's neighbour. The case manager found that the Appellant scored a total 1.5 points out of a possible 51 points on the grid at that time. A claimant must score a minimum of 5 points in order to be eligible for personal care assistance. Since the Appellant scored below the minimum score of 5 points, she is not entitled to personal care assistance benefits. Additionally, the Commission finds that the Appellant did not incur any expenses for assistance with light housekeeping, house

cleaning and laundry. Her neighbour gratuitously assisted her with these tasks without expectation of payment. Accordingly, the Commission finds that the Appellant has not established that she incurred any expenses for personal care assistance which would qualify for reimbursement.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated July 13, 2005 is confirmed.

3. Entitlement to Personal Injury Protection Plan (PIPP) Benefits for Inner Ear Damage

On November 19, 2003, MPIC's case manager issued a decision regarding, amongst other things, the Appellant's claim for inner ear damage. In her decision, the case manager advised that:

Inner Ear Damage

The first record of this symptom was recorded November 16, 2002 by [Appellant's doctor #3]. His narrative report of January 5, 2003 indicates that he recommended a trial off Celebrex and Wellbutrin as these can cause tinnitus. You were referred to [Appellant's ENT specialist] for further investigation. She examined you on December 5, 2002 and her findings were tenderness over the right TMJ with normal neurological findings. Your audiogram showed acute hearing bi-laterally. Based on your subjective report of symptoms to [Appellant's ENT specialist], she commented, "*it sounds like the tinnitus started after the accident and therefore I assume it was related to this trauma*". Given that this symptom was reported one year post accident with no chronological documentation of ongoing symptoms beginning shortly after the collision, a cause and affect relationship cannot be substantiated. Therefore, no benefits can be considered under the PIPP plan for this symptom.

The Appellant disagreed with the case manager's decision and sought a review of that decision. In a decision dated July 14, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the medical documentation on the Appellant's file did not establish that tinnitus resulted from injuries related to the motor vehicle accident of

November 5, 2001 and therefore the Appellant was not entitled to PIPP benefits for inner ear damage.

The Appellant has appealed that decision to this Commission. The issue which requires determination on this appeal is whether the Appellant is entitled to PIPP benefits for inner ear damage.

At the appeal hearing, the Appellant argued that she did incur inner ear damage from the whiplash which she sustained in the motor vehicle accident of November 5, 2001. The Appellant contends that the whiplash upset her inner ear. She maintains that she continues to experience episodes of dizziness to this day and also suffers from nausea due to her inner ear damage. In support of her position, the Appellant relies upon the medical report of [Appellant's ENT specialist] dated December 5, 2002 wherein [Appellant's ENT specialist] noted that:

It sounds like the tinnitus started after the accident and therefore I assume it was related to this trauma.

Counsel for MPIC argues that the Appellant has not established that her inner ear damage is an ongoing complaint or that it is related to the motor vehicle accident of November 5, 2001. In support of his position, counsel for MPIC relies upon the September 8, 2003 interdepartmental memorandum of [MPIC's doctor #2], medical consultant to MPIC Health Care Services, wherein [Appellant's doctor #2] notes that:

The issue of ear "nerve damage" has been raised by the claimant. It is noted that the symptom of tinnitus was initially reported to the physician one year after the motor vehicle accident (November 16, 2002). In response to this, [Appellant's doctor #3] discontinued Celebrex and Wellbutrin, as tinnitus is a potential side effect of these medications. [Appellant's doctor #3] also referred the claimant to an ENT specialist, [Appellant's ENT specialist]. [Appellant's ENT specialist] provided impression that,

“It sounds like the tinnitus started after the accident and therefore I assume it was related to this trauma”.

Tinnitus was initially reported one year following the motor vehicle collision. In the absence of chronological documentation of ongoing symptoms beginning shortly after the collision, a cause and effect relationship cannot be substantiated.

Counsel for MPIC notes that there is no real consistency in the Appellant’s reports of her symptoms of tinnitus throughout the medical evidence in the file. Further, counsel for MPIC maintains that there is no actual diagnosis that the Appellant in fact has inner ear damage. Following [Appellant’s ENT specialist’s] examination of December 5, 2002, there was little, if any, ongoing treatment or assessment for this condition. Accordingly, counsel for MPIC submits that based upon the current available information, there is not enough evidence to establish that the Appellant sustained inner ear damage in the motor vehicle accident of November 5, 2001.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant, and of counsel for MPIC, the Commission finds that the Appellant has not established an entitlement to PIPP benefits due to inner ear damage. A thorough review of all of the information on the file establishes that there is no actual diagnosis of inner ear damage for the Appellant. Additionally, the Commission finds that there is a lack of a temporal relationship between the Appellant’s first complaints of tinnitus to [Appellant’s doctor #3] on November 16, 2002 and the motor vehicle accident of November 5, 2001. We concur that in the absence of chronological documentation of ongoing symptoms beginning shortly after the collision, a cause and effect relationship cannot be substantiated between the Appellant’s reports of tinnitus and the motor vehicle accident of November 5, 2001. Accordingly, the Commission finds that the

Appellant has not established that there is an entitlement to PIPP benefits due to inner ear damage.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated July 14, 2005 is confirmed.

4. Entitlement to Income Replacement Indemnity benefits from April to October 2003

On October 29, 2003, MPIC's case manager issued a decision regarding the Appellant's entitlement to income replacement indemnity ("IRI") benefits from April to October 2003 resulting from the motor vehicle accident of November 5, 2001. In the decision letter, the case manager documents the Appellant's history following the motor vehicle accident as follows:

Although [Appellant's chiropractor's] Initial Report of November 7, 2001 indicated you had less than full function due to symptoms and you were unable to work at any job for three weeks, you did not take this time off. Your employer ([text deleted]) confirmed by correspondence dated January 3, 2003 that you were absent from work on November 23rd due to sickness, and from November 30, 2001 until March 4, 2002 for recovery time from a surgical procedure that occurred December 7, 2001. For November 23, 2001, the actual nature of your sickness was not identified by your employer and no where in the medical information is this day documented. Notwithstanding, you will be given the benefit of the doubt and IRI benefits will be paid for this one day, only.

Information provided by [Appellant's doctor #4] (March 30, 2003) confirms you were authorized to be off work December 3, 4, 5 and 6, 2001 for medical reasons that you were under his care for. The medical information indicates [Appellant's doctor #4] was treating you for [text deleted]. As this medical condition was non-related to the car accident, you are not entitled to IRI benefits from December 3 – 6, 2001 inclusive.

...

Following your surgery for [text deleted], December 7, 2001, you were off work recovering until March 4, 2002. You then returned to work at [text deleted] and declared (meeting of July 11/02) you did miss sporadic days following due to a combination of your migraines, complications from surgery and stress from your job. You declared that you were not looking for any IRI benefits for any days post March 4, 2002. You worked at [text deleted] until you were released July 9, 2002. You

suspected your termination was due to your sick time history, having to leave work early and taking short breaks due to your chronic headaches. You indicated that you would not be fighting this dismissal because [text deleted] had provided you with a reasonable package that included a salary until October 15, 2002. You indicated that you would collect EI benefits until expiry April 2003. During that time frame, you worked at your [text deleted]. You confirmed that you also held employment at [text deleted] this summer (2003) for one month.

During our meeting of September 15, 2003, you indicated that you had a job with [text deleted] which was supposed to start the following Tuesday. In our telephone discussion October 28, 2003, you indicated that your start date had been set back until the end of November as you were not in any condition to write your exams. You have requested IRI benefits in lieu of not being able to hold employment from April 2003 to current.

Based on the medical information, there is no medical evidence that supports the reason you are unable to hold employment is due to the car accident of November 5, 2001. Therefore, you are not entitled to claim IRI benefits from April 2003 to October 2003. There will be no further entitlement beyond November 23, 2001, as per Section 110(1)(a) of the Manitoba Public Insurance Corporation Act.

The Appellant disagreed with the case manager's decision and sought an Internal Review of that decision. In a decision dated August 5, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that there was no documentation on the Appellant's file that she suffered any functional impairment as a result of the motor vehicle accident of November 5, 2001 that would have prevented her from performing her pre-accident employment. Therefore, the Internal Review Officer found that the Appellant was not entitled to IRI benefits from April to October 2003.

The Appellant has appealed that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to IRI benefits from April to October 2003.

The Appellant submits that her chronic pain, which has developed from the various motor vehicle accidents, prevented her from returning to work from April to October 2003. The Appellant insists that the injuries which she sustained in the motor vehicle accident of November 5, 2001 impair her concentration; she has difficulty sleeping as a result of her chronic pain, which further affects her ability to focus on work; her injuries have resulted in increased absenteeism from work, lateness for work and leaving work early in order to attend appointments. The Appellant maintains that she was not in a position to hold employment from April to October 2003 due to these injuries and that she is entitled to IRI benefits for that time.

Counsel for MPIC submits that the Appellant has not established an entitlement to IRI benefits from April to October 2003. Counsel for MPIC maintains that during that time period the Appellant was seeking regular medical attention from various practitioners and there is no documentation from any of these doctors that restricted the Appellant from working. Further, counsel for MPIC states that the Appellant did work at [text deleted] from November 2002 until May 2003. Additionally, she had a [text deleted] job in June 2003. Counsel for MPIC argues that despite the Appellant's testimony that she was unable to work from April to October 2003, there is no objective medical information to substantiate that the Appellant could not hold employment during that time period. Counsel for MPIC submits that her evidence is not supported by the objective medical evidence on this file. As a result, counsel for MPIC submits that the Appellant is not entitled to IRI benefits from April to October 2003.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this

appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established an entitlement to IRI benefits from April to October 2003.

The Commission finds that the Appellant did not establish, on a balance of probabilities, that she was prevented from holding employment due to injuries related to the motor vehicle accident of November 5, 2001 from April to October 2003. Throughout the time period in question, the Appellant did attend upon various practitioners including [Appellant's doctor #5], [Appellant's doctor #6], [Appellant's doctor #7], [Appellant's doctor #8] and [Appellant's doctor #9]. The Commission notes that during the time period in question, the Appellant was seeking regular medical attention but there is no documentation from any health care provider, that the Appellant was incapable of working at this time. The Commission finds that the Appellant's testimony at the hearing, that she was unable to work during this time period due to her pain complaints, is insufficient to establish an entitlement to IRI benefits. The Appellant's testimony is not substantiated by any objective medical evidence during the relevant time period. Therefore the Commission finds that the Appellant has not established an entitlement to IRI benefits from April to October 2003.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated August 5, 2005 is confirmed.

5. **Entitlement to Reimbursement of \$2,500.00 paid in Income Tax to cash in RRSP's**
Entitlement to reimbursement in the amount of \$4,000.00 for legal fees
Entitlement to reimbursement for penalties sustained in cashing in RRSPs
Entitlement to permanent impairment benefits for nerve damage to the left arm

On December 1, 2005, MPIC's case manager issued a decision regarding the Appellant's entitlement to permanent impairment benefits for nerve damage to the left and right sides of her body. The Appellant claimed that she had suffered nerve damage to the left and right sides of her body as a result of the accident of November 5, 2001. The case manager found that the medical evidence on her file established that there was no entitlement to permanent impairment benefits for nerve damage because:

- no neurologic diagnosis has been designated,
- the onset of symptoms occurred at a time remote from the time of the motor vehicle collision, and
- on a balance of probability, symptoms would not relate directly to the injuries sustained November 5, 2001.

In a decision dated November 23, 2005, MPIC's case manager advised the Appellant that there was no coverage for reimbursement of Income Tax fees, legal fees and penalties applied following her RRSP withdrawal. The expenses claimed by the Appellant were broken down as follows:

- \$2,500.00 for having to pay Income Tax for cashing in RRSP's;
- \$4,000.00 for legal fees; and
- \$4,000.00 for penalties due to cashing in RRSP's.

The Appellant disagreed with the case manager's decisions of November 23, 2005 and December 1, 2005 and sought Internal Reviews of those decisions. In a decision dated February 6, 2006, the Internal Review Officer dismissed the Appellant's Applications for Review and confirmed both of the case manager's decisions. The Internal Review Officer found that there was no provision in the MPIC Act or Regulations that would allow for reimbursement of the monetary amounts that the Appellant was seeking. Additionally, the

Internal Review Officer found that the medical evidence on the Appellant's file did not indicate that she had sustained a permanent impairment by way of nerve damage as a result of her motor vehicle accidents and therefore she was not entitled to a permanent impairment benefit.

The Appellant has appealed that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to reimbursement of the monetary amounts for Income Tax fees, legal fees and penalties applied following her RRSP withdrawal and whether she is entitled to permanent impairment benefits for nerve damage.

At the appeal hearing, the Appellant submitted that she has experienced numbness throughout her body which she relates to the accident of November 5, 2001. The Appellant reported that she attended at the [Hospital #1] where she presented with a report of left hand numbness, spasms in her neck and lumps in the back of her neck. As a result of this visit, the Appellant was referred to the [Hospital #1] for further testing. She also saw [Appellant's doctor #9] at the [Clinic #2] for the same condition. The Appellant submits that the left-side numbness is related to her fibromyalgia which is related to her motor vehicle accidents and therefore she is entitled to benefits for nerve damage.

With respect to her claim for monetary amounts for Income Tax fees, legal fees and penalties applied following her RRSP withdrawal, the Appellant argues that because MPIC refused her claim for IRI benefits, she had no choice but to draw down her RRSP's in order to support herself as she was unable to return to work. The Appellant submits that if her claim for IRI benefits is successful, she should be reimbursed for the income tax and penalties which she incurred when she withdrew funds from her RRSP. The Appellant also

argues that she had to hire a lawyer in order to pursue her claim against MPIC for reimbursement of her Imitrex medication. The Appellant states that the lawyer assisted her and her claim was successful, with MPIC agreeing to reimburse her expenses for Imitrex. However, she incurred legal expenses in the amount of \$4,000.00, which she argues should be paid by MPIC.

Counsel for MPIC submits that the Appellant has not established that she sustained nerve damage as a result of her various motor vehicle accidents. In support of this position, counsel for MPIC relies upon [Appellant's doctor #2's] interdepartmental memorandum dated November 7, 2005, wherein [Appellant's doctor #2] noted that the neuro-diagnostic studies obtained on August 14, 2003 were interpreted by [Appellant's doctor #10] as revealing no significant neurological abnormality. [Appellant's doctor #2] also noted that the documentation in the Appellant's file indicates that the numbness began sometime in late July or early August 2003. [Appellant's doctor #2] noted that no neurologic diagnosis has been assigned. [Appellant's doctor #2] concluded that based upon the information that the onset of symptoms occurred at a time remote from her motor vehicle accident, on a balance of probabilities, the Appellant's symptoms would not relate to her motor vehicle accident injuries. Counsel for MPIC therefore submits that since the Appellant's symptoms are too remote from the motor vehicle accidents and they could not be related to the motor vehicle accidents. Additionally, there is no neurological diagnosis for the Appellant's condition and therefore no permanent impairment can be assigned.

With respect to the Appellant's claim for monetary amounts for Income Tax fees, legal fees and penalties applied following her RRSP withdrawal, counsel for MPIC submits that there

is no provision in the MPIC Act or Regulations that would allow for reimbursement of the monetary amounts that the Appellant is seeking.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that:

- 1) there is no provision in the MPIC Act or Regulations that would allow for reimbursement of the monetary amounts that the Appellant is seeking, including reimbursement of Income Tax and penalties resulting from the Appellant cashing in her RRSP's and reimbursement for legal fees; and
- 2) the Appellant has not established, on a balance of probabilities, that she sustained a permanent impairment of nerve damage as a result of her motor vehicle accidents.

The Commission finds that the MPIC Act and Regulations do not provide for reimbursement of the expenses which the Appellant is claiming including penalties and Income Tax incurred when she cashed in her RRSP's and legal fees. The Commission has no jurisdiction to award amounts that are not set out in the MPIC Act and Regulations. Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of these expenses.

The Commission finds that the Appellant has not established, on a balance of probabilities, that she has sustained nerve damage resulting from the motor vehicle accident which would qualify for a permanent impairment benefit. The Commission notes that there is no neurological diagnosis on the file relating to the Appellant's numbness throughout her body.

Further, the neuro-diagnostic studies obtained on November 14, 2003 were interpreted by [Appellant's doctor #10] as revealing no significant neurological abnormality. On this basis, the Commission finds that the medical documentation on the Appellant's file does not support that she sustained nerve damage as a result of her motor vehicle accidents. As a result, the Commission finds that the Appellant has not established, on a balance of probabilities, that she is entitled to a permanent impairment benefit for nerve damage.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated February 6, 2006 is confirmed.

6. Entitlement to IRI Benefits from November 25, 2003 to August 17, 2004

On July 26, 2007, MPIC's case manager issued a decision regarding the Appellant's entitlement to IRI benefits from November 25, 2003 to August 17, 2004. The case manager found that following a review of the Appellant's files, there was no information supporting that the injury sustained in her motor vehicle accident of November 25, 2003 precluded her from working and holding employment following her accident and following the 180th day (May 23, 2004) from that accident. With respect to the accident of February 20, 2004, the case manager found that the Appellant obtained employment on March 1, 2004 with [text deleted]. She was dismissed from that employment on May 13, 2004. The Appellant then declared that she was working/volunteering at [text deleted] sometime in June or July 2004. The case manager found that the Appellant was capable of holding employment by working temporary assignments and a full-time position throughout this time and therefore she was not entitled to IRI benefits for the period from November 25, 2003 to August 17, 2004.

The Appellant disagreed with this decision and sought an Internal Review of the case manager's decision. In a decision dated October 26, 2007, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the Appellant was a non-earner at the time of the November 25, 2003 motor vehicle accident. Since there was no evidence that she was unable to hold an employment during the first 180 days following the motor vehicle accident, the Internal Review Officer found that the Appellant was not entitled to IRI for the first 180 days following the motor vehicle accident. The Internal Review Officer also found that the medical information on the Appellant's file did not indicate that she was incapable of working as a result of injuries sustained in the motor vehicle accident as of the 181st day following the motor vehicle accident (May 23, 2004). With respect to the Appellant's IRI entitlement in relation to the February 20, 2004 motor vehicle accident, the Internal Review Officer found that within a few days of this accident, the Appellant secured employment with [ext deleted] and continued this employment until May 13, 2004. The Internal Review Officer also found that the medical evidence on the Appellant's file confirmed that she did not sustain an injury in the motor vehicle accident that would render her incapable of working. As a result, the Internal Review Officer confirmed the case manager's decision.

The Appellant has appealed that decision to this Commission. The issue which requires determination in this appeal is whether the Appellant is entitled to Income Replacement Indemnity benefits between November 25, 2003 and August 17, 2004.

The Appellant reiterated that from April 2003 ongoing, she has continuously dealt with the injuries which she sustained in her various motor vehicle accidents. She maintains that those injuries prevented her from adequately performing her job duties and therefore she is

unable to hold employment. The Appellant argues that her various doctors' reports document that she has suffered with chronic pain since her motor vehicle accidents. As a result, the Appellant submits that she was unable to hold employment from November 25, 2003 to August 17, 2004 due to her motor vehicle accident related injuries.

Counsel for MPIC submits that the Appellant has not established an entitlement to IRI benefits for the period from November 25, 2003 to August 17, 2004. Counsel for MPIC contends that, on November 25, 2003 when the Appellant had her second motor vehicle accident, she was classified as a non-earner. As a non-earner, there is no entitlement to IRI benefits for the first 180 days unless there was a promised employment. Counsel for MPIC noted that the Appellant was subsequently employed by [text deleted] and was assigned work from December 29, 2003 to January 2, 2004 at [text deleted] and from January 5 to 28, 2004 at [text deleted]. Counsel for MPIC further notes that the Appellant was able to hold those work assignments.

The Appellant was then involved in another motor vehicle accident on February 20, 2004. At the time of the February 20, 2004 accident, the Appellant still had her name with [text deleted] but she was not currently on assignment and had no promised employment. Between March 1 and May 13, 2004, the Appellant was employed as a [text deleted]. [Text deleted] confirmed that the Appellant's employment ended on May 13, 2004, because she was not meeting expectations. On August 18, 2004, the Appellant started working full-time with [text deleted]. Counsel for MPIC submits that the Appellant is not entitled to IRI benefits from May 14, 2004 until August 17, 2004 as there is no medical evidence to substantiate that the Appellant could not work between those dates. Counsel for MPIC notes that the Appellant was able to work following the motor vehicle accidents of November 25,

2003 and February 20, 2004. He maintains that there are no medical reports to substantiate that the Appellant could not work during the time periods in question. Accordingly, counsel for MPIC argues that the Appellant's appeal should be dismissed and the Internal Review decision of October 26, 2007 should be confirmed.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on balance of probabilities, that she is entitled to IRI benefits from November 25, 2003 to August 17, 2004.

The Commission finds that the evidence before it establishes that the Appellant was capable of holding employment following her accident on November 25, 2003 and following the accident of February 20, 2004 as she did in fact hold employment following those accidents. The Commission notes that the Appellant was employed by [text deleted] following the November 25, 2003 accident. She was assigned work from December 29, 2003 to January 2, 2004 at [text deleted] and from January 5 to 28, 2004 at [text deleted]. Between March 1 and May 13, 2004, the Appellant was employed as a [text deleted]. The Commission finds that the Appellant was capable of working for significant periods of time following each of her accidents.

In addition, the Commission finds that there is no objective medical evidence which substantiates that the Appellant was unable to work following either of those motor vehicle accidents due to injuries sustained in those accidents. The Commission notes that during the time period in question, the Appellant was seeking regular medical attention but there is no

documentation from any health care provider, that she was incapable of working at this time. The Commission finds that the Appellant's testimony at the hearing, that she was unable to work during this time period due to her pain complaints, is insufficient to establish an entitlement to IRI benefits. The Appellant's testimony is not substantiated by any objective medical evidence during the relevant time period. Therefore the Commission finds that the Appellant has not established an entitlement to IRI benefits from November 25, 2003 until August 17, 2004.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated October 26, 2007 is confirmed.

Dated at Winnipeg this 13th day of June, 2013.

YVONNE TAVARES

MARY LYNN BROOKS

LEONA BARRETT