

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File Nos.: AC-12-066, AC-14-165

PANEL: Ms Jacqueline Freedman, Chairperson
Ms Linda Newton
Ms Sandra Oakley

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation (“MPIC”) was represented by Ms Danielle Robinson.
Interpreter: [text deleted]

HEARING DATES: March 10, March 11, and March 24, 2015

ISSUE(S):

1. Whether the Appellant is entitled to reimbursement of expenses incurred for the following: physiotherapy treatments, chiropractic treatments, acupuncture treatments, kinesiology treatments, medical aids and supplies and medical reports.
2. Whether the Appellant is entitled to a reassessment of his need for Personal Care Assistance benefits.

RELEVANT SECTIONS: Subsections 131(1) and 136(1) of The Manitoba Public Insurance Corporation Act (“MPIC Act”) and Sections 2, 5, 10 and 43 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

Background:

The Appellant, [text deleted], was a pedestrian who was hit by a truck on January 11, 2008. He suffered various injuries as a result of the accident. He sought several forms of treatment and

incurred expenses for those treatments. He also incurred expenses related to personal home care assistance. For a period of time, MPIC covered the Appellant's expenses.

The Appellant's case manager, by letter dated August 21, 2009, advised the Appellant that treatments related to supervised care, including physiotherapy, chiropractic and acupuncture treatments, would no longer be covered by MPIC beyond August 6, 2009. In addition, the case manager indicated that MPIC concluded that the medical evidence did not indicate that personal care assistance was medically required and therefore MPIC declined to provide a reassessment of the Appellant's personal care assistance benefits. The decision of the case manager was confirmed by an Internal Review Officer by letters dated July 30, 2010, and January 27, 2012. The Appellant disagreed with these Internal Review decisions and filed an appeal with the Commission. In addition, by letter dated October 7, 2014, the case manager advised the Appellant that he was being denied reimbursement for kinesiology treatments and for certain medical aids and supplies. In the same letter, the case manager confirmed that the Appellant had been reimbursed certain amounts in respect of medical reports. The Appellant disagreed with the case manager's decision on these issues and the parties agreed that the Appellant would forego the Internal Review stage and appeal the case manager's decision directly to the Commission.

There are several issues which require determination on this appeal, as follows:

1. Whether the physiotherapy treatments, chiropractic treatments and acupuncture treatments received by the Appellant after August 6, 2009, were medically required;
2. Whether the kinesiology treatments received by the Appellant after August 6, 2009, were medically required;
3. Whether the Appellant is entitled to reimbursement for certain medical aids and supplies;

4. Whether the Appellant is entitled to reimbursement for certain medical reports beyond the amount already reimbursed by MPIC; and
5. Whether the Appellant is entitled to a reassessment of his personal care assistance benefits.

Decision:

For the reasons set out below, the panel finds as follows:

1. The Appellant has established that the physiotherapy treatments, chiropractic treatments and acupuncture treatments that he received after August 6, 2009, were medically required;
2. The Appellant has not met the onus to establish that the kinesiology treatments that he received were medically required;
3. The Appellant is not entitled to reimbursement for the medical aids and supplies in issue;
4. The Appellant is not entitled to any further reimbursement in respect of medical reports; and
5. The Appellant has not met the onus to establish that he is entitled to a reassessment of his personal care assistance benefits.

Preliminary Matters:

At the outset of the hearing, the panel raised with the parties the fact that most of the treatments in issue received by the Appellant were rendered outside of Manitoba, which would seem to raise a question as to whether they are reimbursable under subsection 5(b) of Manitoba Regulation 40/94 (the Commission has considered this issue in previous cases). Counsel for MPIC indicated to the panel that MPIC did not intend to rely on that subsection to deny payment of the expenses; to the contrary, in argument counsel for MPIC urged upon the panel that the MPIC Act and

Regulation should be given a large and liberal interpretation. MPIC noted that it had paid for certain expenses even while the Appellant was in [city #1], terminating such payment only when MPIC deemed the expenses to no longer be medically required. Given MPIC's favorable interpretation and application of the legislation, the panel has confined our disposition of this matter to whether the treatments received by the Appellant were medically required.

One other preliminary matter was raised by the Appellant at the outset of the hearing. His appeal included claims for reimbursement of expenses incurred for massage therapy as well as legal fees. Counsel for the Appellant indicated to the panel that Appellant was no longer pursuing the appeal with respect to these items.

Opening Statements:

Counsel for each party made an opening statement at the outset of the hearing and they were very helpful to the panel. Those statements will not be summarized here, as their content was reflected in the submissions of the parties, which will be dealt with below.

Evidence for the Appellant:

The Appellant currently resides in [city #1] with his family. He testified by teleconference at the hearing of his appeal, as did his mother and sister.

The Appellant:

The Appellant indicated that he came to Canada at age seven with his family and they lived in [city #1]. After graduating high school, he moved to [city #2] and lived with his sister, where he took some courses at [text deleted]. In 2005, he moved to [city #3] to attend [text deleted]. He described his activities prior to the accident as follows: he was quite athletic; he had a gym

membership and he would go running regularly on an indoor track. He engaged in many different activities, including rollerblading, skiing and basketball. He lived on his own and did his own cooking, cleaning and “anything a person living independently” would do. He attended school and was healthy and active. He also worked on the weekends at a convenience store selling [text deleted].

He described the motor vehicle accident. He indicated that he doesn’t remember getting hit by the vehicle. He was coming back from school, crossing a street near his apartment. What he remembers is being horizontal opposite to the car in the air and then hitting the ground and lying on his back. He was in significant pain immediately after the accident. He was also confused. He was taken to the hospital and released. The next day he felt nauseous and went back to the hospital. He had pain in different parts of his body and went to see [Appellant’s doctor #1] at [text deleted].

His MPIC case manager arranged for an assessment related to personal care assistance (“PCA”) and an occupational therapist attended at his home to do such an assessment.

Immediately after the accident his sister had come from [city #2] to live with him and assist him. He indicated that he was very dependent on her at that point. He had difficulty with everything. The PCA services funded by MPIC, in the form of [PCA service provider], helped with the vacuuming, cleaning, cooking and laundry and his sister assisted as well with dressing him and doing other things, for example moving things closer to him. [Appellant’s doctor #1] recommended that he get a tape recorder to record his university classes, as he was having memory and comprehension problems.

In April of 2008, three months after the accident, he went with his sister to [city #2] and saw additional physicians. They returned to [city #3] shortly thereafter and the Appellant spent the summer in [city #3] with his sister and then his mother came to help look after him. [PCA service provider] continued to provide personal care assistance. MPIC continued to assess his PCA needs from time to time and provide funding. The Appellant indicated that in June of 2008, he had a flare-up of his back injury in attempting to catch something rolling off the counter and that flares of pain are an issue. A PCA assessment was done in July of 2008 and although he scored lower on this assessment, he still qualified for funding.

The Appellant attended for a multi-disciplinary assessment at [rehabilitation (rehab) clinic] in August 2008. Around that time, the Appellant was referred to [Appellant's neurologist #1], a neurologist and [Appellant's neuropsychologist], a neuropsychologist.

In August of 2008, the Appellant's counsel requested that another PCA assessment be done, and one was done, dated September 25, 2008. The Appellant testified to the nature of the assessment done by the occupational therapist, [Appellant's occupational therapist #1], and while he acknowledged that she did do some physical testing, he disputed her conclusions. He indicated that she made certain inferences and he disagreed that he refused to do tasks. He said he did whatever he could, but he pulled back when the pain would kick in. He described some misunderstandings during their interaction. For example, in her report [Appellant's occupational therapist #1] describes a gym bag and the Appellant testified that he never owned a gym bag, although he did own a backpack which he used for school. He indicated that [Appellant's occupational therapist #1] said she has seen other people with similar injuries and they could do more than he could. He indicated that he felt that she was implying that he was faking. The

resulting score of this PCA assessment was such that the Appellant was no longer entitled to PCA assistance benefits as of October 10, 2008.

When the Appellant ceased receiving funding from MPIC for personal care assistance, he found it difficult to care for himself, as his mother was going back to [city #1] and was not going to be able to stay to help him. As well, his sister was no longer able to stay in [city #3]. Accordingly, he determined to return to [city #1] himself to be in the care of his family. He moved to [city #1] in approximately November or December 2008 (although he did come to [city #3] in December for an appointment with [Appellant's neuropsychologist]).

The Appellant continued to see medical professionals in [city #1] from the time of his return there and continues to do so up to the present date. He returned to his family physician, [Appellant's doctor #2], who he had seen in [city #1] when he was originally living there. [Appellant's doctor #2] referred him to various other specialists, including [Appellant's neurologist #2], a neurologist, [Appellant's psychologist], a psychologist, and an occupational therapy consulting company, [text deleted]. The Appellant was also referred to [Appellant's chiropractor #1], a chiropractor, from whom he continues to receive treatment. As well, the Appellant received chiropractic treatment from [Appellant's chiropractor #2]. [Appellant's doctor #2] also referred the Appellant for physiotherapy. The Appellant also received acupuncture from [Appellant's acupuncturist]. The Appellant also sought treatment from a kinesiologist and had some massage therapy.

MPIC ultimately referred the Appellant to [independent psychologist], a psychologist, for an independent psychological examination. [Independent psychologist] gave a lengthy report and recommended that the Appellant attend a pain clinic. This had initially been recommended by

[Appellant's neuropsychologist] a few years earlier. In 2013 this recommendation was approved by MPIC and the Appellant did attend the [pain clinic] for 43 days. He testified that this was a very good experience for him and it gave him hope. He indicated that through his experience at the clinic, he was able to understand his chronic pain problem. At the clinic they gave him cognitive exercises to help his memory and these also helped to calm him down. They gave him techniques to help with his psychological, cognitive and physical problems in order to help him have a more normal life. A very important part of the program was that there was supervised treatment of all kinds due to [pain clinic's] multi-disciplinary approach. There was a physiotherapist, a kinesiologist, a psychologist, and an occupational therapist that monitored everything. The Appellant described a typical day at the program, which included light stretches and walking as well as classes and physiotherapy. On discharge from the program [pain clinic] recommended that he return to school and try to finish his courses. [Independent psychologist] noted that the Appellant planned to continue to see [Appellant's psychologist], the psychologist. However, the Appellant noted that he couldn't afford to continue to see [Appellant's psychologist] without ongoing financial support from MPIC.

On cross-examination, the Appellant was asked whether his condition has improved since the day of the accident and he said that there have probably been some improvements. He was also asked whether the final PCA Assessment Tool used by MPIC involved more of an assessment of physical function than the prior tools. He answered affirmatively, indicating that on the final assessment he was asked to do various movements, whereas at the prior PCA assessments he was not asked to do any. However, in response to his own counsel he noted that his condition and physical limitations had not changed between that final PCA assessment and the one immediately prior.

The Appellant's Mother:

The Appellant's mother, [text deleted], also testified via teleconference. Although she began her testimony in English, she shortly thereafter determined that she would prefer to provide her testimony in [text deleted], with the assistance of a translator, and her testimony then proceeded in this way.

The Appellant's mother indicated that she has a background in education. She has a Bachelor Degree in [text deleted] and a Masters in [text deleted]. Currently she is not working outside the home. She takes care of the Appellant in her house. She does the cooking, cleaning, sewing and other household duties, including reading to the Appellant. She is otherwise retired. Prior to retirement she was an educator in [text deleted] and was involved in teaching. She was a vice-principal and principal of a high school in [text deleted]. In [Canada] she taught English as a second language.

She indicated that when the Appellant was living with her prior to the accident, he was healthy and a bright and active person. He was involved in many sports, including running, hiking and basketball. He was a good communicator and had lots of friends.

After the accident, the Appellant's mother went to [city #3] in July, 2008 and stayed until November. She recalled that the Appellant was in a very bad condition. She was surprised to find her son lying down so much. She stayed in his apartment with him and helped him out. Although [PCA service provider] was coming to provide some personal care assistance, she helped in other ways. She cooked special food items and provided emotional support.

She indicated that the decision was made to move back to [city #1] around November of 2008. They felt that [city #1] was their home and they were familiar with the physicians there and they could look after him better there. Every day in [city #1], the Appellant went for massage or physiotherapy or acupuncture. He did all of the exercises that were recommended for him.

Throughout this time she was emotionally supporting him as well as assisting him with some household duties in addition to those provided by [PCA service provider]. She indicated that after the Appellant attended at [pain clinic], he had a better ability to function in the household. He had more concentration. She was able to observe this by virtue of noticing that he is better at the exercises given to him from [pain clinic].

On cross-examination, the Appellant's mother indicated that when the Appellant was living with his parents, he was doing his own laundry and cleaning his own room, because she was trying to teach him how to live on his own as he is an adult, although she was doing the shopping and cooking.

The Appellant's Sister:

The Appellant's sister, [text deleted], also testified via teleconference. The Appellant's sister is older than the Appellant and indicated that she came to Canada with her family in 1987 at the age of [text deleted]. When she came she entered University and obtained a degree in [text deleted]. She worked in the field for 15 years, from 1994 to 2008. From 1998 to 2008 she was located in [city #2], although over the years her work has taken her throughout both Canada and the U.S. In 2009 she moved back to [city #1] and entered a Ph.D. program in [text deleted]. She has one other brother in addition to the Appellant and he is also a [text deleted].

The Appellant lived with his sister in [city #2] for a few years, prior to the time that he moved to [city #3] in order to pursue his university education. During that time they shared a two bedroom, two bathroom condo. She commented that he was a loving, caring person. He was an athletic, bright, happy person who always wanted to do things and learn new things. He enjoyed creating things and was never afraid to try new things. He was quite popular with his friends, very caring with everyone, good at expressing himself, helpful to others in need, able to express himself in three languages ([text deleted]) and very independent.

With respect to the living arrangements, they did many things together, including shopping and outings on the weekend. They would prepare food together and do sports together. They would have breakfast and dinner together, although laundry they did on their own. She indicated that she was initially quite against him moving to [city #3] because it was so far away. However, [text deleted] he was determined to pursue a degree in [text deleted] and he was very independent, so she supported him. She indicated that after he moved to [city #3], they spoke on the phone daily and he took a lot of pride in being on his own.

She recalls when he told her about the accident. She questioned why no MRI was done and she indicated that from her own experience with designing diagnostic devices, it is important to diagnose quickly. Therefore, she was concerned that he have an MRI quickly and wanted to come help facilitate this but was unable to visit him in [city #3] [text deleted]. Therefore, she arranged for the Appellant to visit her physician in [city #2] and that is why he came to [city #2] the following week, to have an MRI done privately.

The Appellant's sister indicated that she returned to [city #3] with him and noticed changes in his behaviour at this time. He used to be neat and clean but he would now forget where he put

things and have difficulty remembering questions he had just asked previously. She would accompany him to appointments in order to assist him in remembering things he needed to ask about. She would assist him by driving to appointments, cooking, cleaning, doing laundry and other household chores. She indicated that he seemed to be having comprehension problems and he would get impatient and easily frustrated. His focus was not the same as it used to be. She stayed until the early part of February, and then returned periodically to [city #3] until June 2008. She indicated that it soon became clear that he could not get all the assistance he needed in [city #3] and eventually due to various factors, the decision was made for him to return to [city #1]. Initially it was thought that he could share an apartment with her upon his return; however, due to his ongoing needs for basically full-time support, and her full-time enrolment in grad school as well as her job, she was unable to provide the support that he needed and he moved in with his parents.

After his return to [text deleted], she continued to provide assistance when she could. She was involved in shopping and driving him to appointments on the weekend. During the week her other brother was involved, as well as her mother. That involvement has decreased after his attendance at [pain clinic]. She indicated that one of the biggest changes has been with his university courses. Before his attendance at [pain clinic], the Appellant was having difficulties focusing and accepting help with his studying. His success at [pain clinic] has allowed him to work on his focus issues and to accept some tutoring.

Evidence for MPIC:

MPIC did not call any witnesses. They did, however, rely on many reports in the indexed file and made reference to them in their submission.

Submission for the Appellant:

The Appellant's position is that he is entitled to reimbursement of his expenses for all medical treatments received and for all PCA expenses incurred, on the basis that all such expenses were medically required.

Counsel for the Appellant submitted that the Appellant suffered severe physical injuries in the motor vehicle accident. And yet although there was a severe physical blow, even these physical injuries took a back seat to the pain. MPIC has a responsibility to do the best that it can to assist someone who has been injured in a motor vehicle accident; however, the diagnosis of the Appellant's pain disorder came only grudgingly. The Appellant was left to his own devices and he followed the advice and direction of his treating physicians. These physicians suggested a multi-disciplinary approach to the Appellant's pain disorder.

Counsel noted that there is not a hint from any of the physicians that the pain disorder is anything like malingering. The Appellant's efforts have been genuine and he has participated fully in all treatments. There is no suggestion that he is faking, other than perhaps from the occupational therapist, [Appellant's occupational therapist #1]. He has made a sincere effort to get better.

Counsel for the Appellant provided a written summary of relevant reports in the indexed file to which he referred the panel, which was appreciated. Counsel noted that shortly after the motor vehicle accident, the Appellant's physicians were recommending that he not return to work. In particular, his general practitioner at the time, [Appellant's doctor #1], noted in her report dated May 20, 2008, that "I do not feel he can currently return to work". She referred him to [Appellant's neurologist #1], a neurologist, and to [Appellant's neuropsychologist], a neuropsychologist. [Appellant's neurologist #1], in his report dated June 3, 2008, concurred

with [Appellant's doctor #1's] recommendation that a neuropsychological assessment would be helpful. [Appellant's neuropsychologist] ultimately did perform such an assessment and his report is dated September 30, 2008. In that report he diagnosed the Appellant as having a pain disorder associated with both psychological factors and a general medical condition. Counsel noted that [Appellant's neuropsychologist] recommended that the Appellant should be provided with treatment for his chronic pain condition.

Counsel for the Appellant noted that up until this date, September 30, 2008, MPIC had been supporting the Appellant by funding PCA benefits, as well as chiropractic and physiotherapy treatment benefits. PCA benefits were terminated soon after that, effective October 10, 2008. However, even though the Appellant shortly thereafter moved to [city #1] in December, 2008, chiropractic, physiotherapy and acupuncture treatment benefits continued to be funded by MPIC until August 6, 2009.

Counsel for the Appellant argued that these treatments continued to be medically required by the Appellant even after August 6, 2009, as they were recommended by his treating physicians, all of whom recommended a multi-disciplinary approach to the Appellant's chronic pain condition.

As an example, counsel referred to the report of [Appellant's neurologist #2], a neurologist who the Appellant saw in [city #1]. His report is dated February 20, 2009, and notes "I did not find any neurological compromise at this time. He needs proper rehabilitation and physiotherapy. He may end up going to pain management clinic since his back pain continues".

The Appellant was also seeing [Appellant's psychologist], a psychologist in [city #1]. In her report dated September 4, 2009, she noted the Appellant's diagnosis of major depressive disorder

as well as pain disorder associated with both psychological factors and a general medical condition. She recommended ongoing treatment through weekly sessions with herself. In addition, she suggested a referral to a pain program. This referral to a pain program was in fact approved by MPIC's Health Care Services' psychological consultant in a report dated June 11, 2010. However, counsel pointed out that due to various internal bureaucratic issues at MPIC, the actual referral to the pain program did not occur until April 2013, after the Appellant was referred to [independent psychologist] for an independent psychological assessment. [Independent psychologist's] report is dated June 7, 2012, and also recommends a referral to a pain clinic. As indicated in the Appellant's testimony, he attended at the [pain clinic] for 43 days, where they use a multi-disciplinary approach, and he achieved success there.

Counsel for the Appellant urged the panel to accept the recommendations of the Appellant's treating physicians with respect to his requirement for various modalities of treatment including chiropractic treatment, physiotherapy, acupuncture and kinesiology. Counsel argued that these treatments were medically required due to the Appellant's chronic pain condition. He indicated that all of the Appellant's treating physicians were aware that he was pursuing these modalities of treatment and none of them suggested that he cease dealing with the physical components of his injuries.

With respect to the requirement for a new PCA assessment, counsel for the Appellant argued that the most recent PCA assessment, dated September 25, 2008, by occupational therapist [Appellant's occupational therapist #1], was flawed, and should be disregarded. He acknowledged that the Appellant had sought an Internal Review with respect to the case manager's decision terminating PCA and that the Internal Review decision had not been appealed to the Commission. However, counsel argued that the assessment done by [Appellant's

occupational therapist #1] is tainted by her apprehension that the Appellant was faking. Accordingly, he argued that it must be disregarded and that there is unfairness in requiring the Appellant to abide by a strict interpretation of the rules with respect to filing an appeal.

The Appellant simply cannot perform the heavy housework that he would have to do. He has hired [PCA service provider], which has attended on a reasonable basis, with fees of, on average, approximately \$2,500 a year, which is very modest. They are very focused on the laundry, the heavy housecleaning and the Appellant's responsibilities in the apartment. [Appellant's occupational therapist #1] told the Appellant that there was nothing wrong with him. The Appellant's evidence was that he felt that she was saying that you don't have any problems, that other people are worse off and that you could do more. The Appellant testified that he felt that she had already made up her mind before she got there. Counsel argued that the report is tainted and should be given very little weight compared to the report of [Appellant's neuropsychologist] of the very same time frame. The Appellant testified that he complied to the best of his ability and that he was in constant pain.

Counsel for the Appellant argued that the previous PCA assessment done on July 2, 2008, awarded the Appellant PCA benefits and his condition had not changed from July to September. He had difficulty with washing, heavy lifting and cleaning. Similarly, the condition that is reported by the occupational therapy assessment done by [occupational therapy consulting company] on April 20, 2009 is also reflective of the Appellant's condition and counsel urged the panel to accept either one of those assessments as indicating that a new PCA assessment should be ordered.

Submission for MPIC:

Counsel for MPIC provided written notes of her submission, which was appreciated. It was MPIC's submission that as of August 6, 2009, further supervised treatment was no longer medically required. In particular, counsel argued that chiropractic treatment, physiotherapy and acupuncture were no longer medically required.

Counsel referred the panel to various medical reports which, she argued, suggested that the Appellant sustained only soft tissue injuries as a result of the accident. These include the Emergency Room report of January 11, 2008, in which the Appellant was diagnosed with sprain and multiple contusions and released the same day. In addition, counsel referred to at least 9 diagnostic tests performed in the three years between January 11, 2008 and February 7, 2011. These consisted of various imaging reports in which the recurring finding is a small posterior disc bulge at L5-S1. Counsel argued that the Appellant did not sustain any fractures or neurological issues as a result of the accident; rather, the injuries sustained were of a soft tissue nature.

MPIC did support the Appellant with chiropractic treatment, physiotherapy and acupuncture treatments for a time following the accident. MPIC acknowledged that such treatments were medically required and that they could have assisted the Appellant in dealing with the soft tissue strains that were diagnosed as a result of the accident. However, counsel for MPIC argued that such treatments did not provide a real or sustained benefit to the Appellant. Counsel submitted that such treatments were medically detrimental as noted by [independent psychologist] in his report of June 7, 2012. At page 20 of his report, he states:

“Perpetuating causes include a preponderance of passive rehabilitation measures that reinforce this patient's determination to avoid unnecessary movement and the much dreaded “back lock-up”. He has received some well-meaning family support for display

of such behaviors, and has taken a leading role in selection of largely passive rehabilitation and other medical or alternative therapies”.

Counsel also referred to the report of [Appellant’s neurologist #2], a neurologist. His report is dated June 19, 2009 and states “His low back pain continues the same and he has had no benefit from all modalities of conservative treatments”.

Counsel for MPIC also noted that the Appellant’s objective scoring of his pain levels at chiropractic treatment remained relatively unchanged through the course of his treatment. He also testified that the treatments would provide him with relief that lasted for a day or possibly up to a week. Counsel argued that this shows that further chiropractic treatment was not providing functional gains. Similarly, counsel argued that the physiotherapy treatments were not alleviating the Appellant’s pain, as they did not result in significant improvement. As well, the acupuncture treatments did not provide the Appellant with sufficient relief.

With respect to the kinesiology treatments, counsel for MPIC argued that the Appellant did not meet the onus of showing that these treatments would be allowed under the MPIC Act or Regulations.

Similarly, the Appellant did not provide any prescription or doctor’s note recommending an adjustable bed or water walking belt for which he is seeking reimbursement and counsel for MPIC therefore submitted that these expenses cannot be considered necessary or advisable. Therefore there is no entitlement to reimbursement under the MPIC Act or Regulations.

Counsel for MPIC also argued that the Appellant has already received reimbursement for three medical reports in accordance with the Regulations and is not entitled to any further reimbursement.

With respect to the Appellant's request for a new reassessment of his PCA benefits, counsel for MPIC argued that the Appellant had an opportunity to dispute the PCA assessment completed by [Appellant's occupational therapist #1] on September 25, 2008, and in fact did so by filing for Internal Review of that assessment. An Internal Review decision was issued on November 23, 2009. However, the Appellant did not file an appeal of that decision with the Commission. Accordingly, counsel for MPIC argued that in order to bring the issue of the termination of PCA within the jurisdiction of the Commission, counsel would have to file an appeal of that Internal Review decision and explain the almost six year delay in filing.

Since the termination of PCA is not currently within the jurisdiction of the Commission, the only remedy available to the Commission based on the Internal Review Decisions now before it would be for the Commission to consider ordering that a new PCA assessment could take place. Counsel for MPIC argued that there is no reason to order a new PCA assessment. Counsel referred the panel to a report from Health Care Services dated July 7, 2009, in which the psychological consultant, [MPIC's psychologist], gave his opinion as to whether the Appellant had a psychological impairment of function that would support or warrant a need for PCA. He wrote: "With regard to the issue of personal care assistance, it is rare that an individual requires such intervention for a psychological condition. In this case, a pain disorder would not appear to warrant such assistance".

The issue was also referred to Health Care Services' medical consultant, [MPIC's doctor], to comment on whether the Appellant had a physical impairment of function that would support or warrant a need for PCA. In his report dated July 21, 2009, [MPIC's doctor] wrote:

“The medical evidence does not indicate an updated personal care assistance assessment needs to be performed in order to assess functional limitations [the Appellant] might still experience as a result of the incident in question (it is not medically probable that [the Appellant] has a functional limitation arising from the incident in question for which personal care assistance would be viewed as being medically required).”

Counsel for MPIC submitted that there was nothing to warrant that the Appellant's medical condition had changed since the September 25, 2008, PCA assessment was done such that PCA benefits would be required as a result of the injuries sustained in the accident.

Reasons for Decision:

In order to qualify for entitlement to Personal Injury Protection Plan (“PIPP”) benefits, the onus is on the Appellant to establish, on a balance of probabilities, that he has suffered an injury caused by an accident within the meaning of subsection 70(1) of the MPIC Act. That is not in dispute here. The Appellant must further establish that the treatments that he has received are medically required. There are additional rules with respect to reimbursement of personal care assistance expenses.

The relevant provisions of the MPIC Act relating to the expenses in issue are as follows:

Reimbursement of personal assistance expenses

131(1) Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than \$3,000. per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.

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; ... [and]
- (d) such other expenses as may be prescribed by regulation.

The relevant provisions of Manitoba Regulation 40/94 relating to expenses are as follows:

Definition

2(1) In this section, “**personal care assistance**” means assistance with an activity where

- (a) the activity is described in Schedule C and, in accordance with that Schedule,
 - (i) it applies to the victim,
 - (ii) it is appropriate for the victim’s age, and
 - (iii) the victim had the capacity to perform it at the time of the accident; and
- (b) the assistance
 - (i) is provided directly to and solely for the benefit of a victim, and
 - (ii) has been evaluated in accordance with Schedule D.

Interpretation — section 131 of Act

2(2) For the purposes of section 131 of the Act, qualifying personal care assistance is personal home assistance.

Reimbursement for personal care assistance under Schedules C and D

2(3) Subject to the maximum amount set under section 131 of the Act, the corporation shall reimburse a victim for the actual and proven expenses of personal care assistance in accordance with Schedules C and D if

- (a) the personal care assistance meets the minimum score prescribed in Schedule D;
- (b) the personal care assistance expenses are the direct result of the victim's bodily injury caused by an automobile for which compensation is provided under Part 2 of the Act; and
- (c) the personal care assistance expenses are not covered under *The Health Services Insurance Act* or any other Act.

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist,

chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant;

- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

...

- (d) reimbursement of the victim at the sole discretion of the corporation for
- (i) wheelchairs and accessories,
 - (ii) mobility aides and accessories,
 - (iii) medically required beds, equipment and accessories,
 - (iv) specialized medical supplies,
 - (v) communication and learning aids,
 - (vi) specialized bath and hygiene equipment,
 - (vii) specialized kitchen and homemaking aides, and
 - (viii) cognitive therapy devices;

...

Medical report ordered in support of review or appeal

43 The corporation shall pay the cost of a medical report referred to in section 148 of the Act to the following maximum amounts:

- (a) \$250. for a medical report prepared by a practitioner who examined the person for the purpose of making the report;
- (b) where the medical report is prepared by more than one practitioner, after the person is jointly examined by the practitioners for the purpose of making the report, \$250. for each practitioner to a maximum of three practitioners.

Upon hearing the testimony of the Appellant, his mother and sister and after a careful review of all the reports and documentary evidence filed in connection with this appeal (the most pertinent of which are referred to below) and after hearing the submissions of counsel for the Appellant and counsel for MPIC and taking into account the provisions of the relevant legislation, the Commission finds as follows:

Physiotherapy Treatments, Chiropractic Treatments and Acupuncture Treatments:

Dealing first with the physiotherapy, chiropractic and acupuncture treatments that the Appellant received, the onus is on the Appellant to show, on a balance of probabilities, that these treatments were medically required.

As indicated above, MPIC had been initially funding these treatments. For example, MPIC's Health Care Services consultant, [MPIC's chiropractor], noted on February 19, 2008, that "in my opinion, the medical information supports the need for concurrent chiro and physiotherapy/athletic therapy".

In recognition that additional assistance was required for the Appellant's rehabilitation, the Appellant was referred to [rehab clinic] for a multi-disciplinary assessment. In [rehab clinic's] report dated August 13, 2008, the following diagnoses were provided:

"The diagnoses are listed in rank order, with most prominent difficulties listed first.

1. WAD II Cervical Spine.
2. Myofascial Neck and Shoulder Pain.
3. Mechanical Low Back Pain Syndrome.
4. Kinesiophobia (fear of pain and movement).
5. ? Post-Concussion Syndrome.
6. Overweight (mild).
7. Elevated concerns regarding pain, activity and work.
8. Possible Depression. Severe Beck's score (39/63).

The subjective complaints were consistent with the objective findings. Symptom magnification is not evident."

The physicians at [rehab clinic] recommended as follows "It is not felt that this man would be a good candidate for a physical rehab program due to the pain-focused presentation, the magnitude of pain beliefs and behaviours, and physical inconsistencies presented." In other words, although

the Appellant had several physical complaints, it was impossible to separate his physical injuries from his pain concerns.

Accordingly, the Appellant was referred for a neuropsychological assessment with [Appellant's neuropsychologist]. In his report is dated September 30, 2008, he stated:

"I am very concerned over [the Appellant's] ability to cope with his back pain. Thus the primary diagnosis would be Pain Disorder. ... The sub-type would be Pain Disorder Associated with both Psychological Factors and a General Medical Condition. A further classification is that it is "chronic", since pain symptomatology has been persisting for more than 6 months. This diagnosis is also consistent with some of the information from his assessment at [rehab clinic], where they had identified some psychological barriers to recovery..."

[Appellant's neuropsychologist] went on to conclude "He is already receiving chiropractic care, physiotherapy and massage a number of times a week, but these "physical" forms of treatment are clearly not sufficient alone to assist with his coping, and he needs a psychological component as well." [Appellant's neuropsychologist] was supportive of a multi-disciplinary approach and recommended that the Appellant receive treatment from a psychologist that would address chronic pain behaviour.

[Appellant's neuropsychologist] saw the Appellant once again on December 18, 2008, and provided a report to MPIC dated February 5, 2009. In that report he stated:

"1. [The Appellant] continues to meet the criteria of a Pain Disorder from a psychological perspective. I do not see any significant change in this from my contacts with him at the time of my September 30, 2008 report to you.

2. Although there are logistical issues with [the Appellant] moving to [city #1], I would continue to recommend MPI's consideration of seeing a psychologist to assist him with pain coping."

The Appellant did in fact seek treatment with a psychologist in [city #1], [Appellant's psychologist].

The Appellant also saw other physicians in [city #1], as indicated in his testimony. He saw his general physician, [Appellant's doctor #2], who had treated him earlier in his life. In [Appellant's doctor #2's] chart notes from a visit on November 14, 2008, he noted "sees acupuncturist, chiropractor, M/T [massage therapy], P/T [physiotherapy]." Further notes document the Appellant's continued visits with those medical professionals. Chart notes from a November 21, 2008, visit indicate that the Appellant wanted to see a doctor regarding pain management and that [Appellant's doctor #2] approved this. Further notes from a June 29, 2009, visit indicate that the Appellant's "knee has improved considerably (physiotherapy effective)".

[Appellant's doctor #2] also referred the Appellant to a neurologist, [Appellant's neurologist #2], who provided a report dated February 20, 2009. In that report, [Appellant's neurologist #2] stated as follows:

"I did not find any neurological compromise at this time. He needs proper rehabilitation and physiotherapy. He may end up going to pain management clinic since his back pain continues."

The Appellant was also receiving acupuncture treatments from [Appellant's acupuncturist], who provided a report dated May 11, 2009. [Appellant's acupuncturist] noted that the Appellant continued to see his psychologist, [Appellant's psychologist], for various psychological issues.

He stated:

"I believe he suffers from whiplash and it would take at least 2 years to see definite improvements."

The Appellant was also receiving chiropractic treatments in [city #1], from [Appellant's chiropractor #2] and [Appellant's chiropractor #1]. [Appellant's chiropractor #2] provided a report dated January 20, 2010, in which he noted:

“... It is my professional opinion that the prognosis for [the Appellant’s] complete recovery is guarded and he will most likely require some ongoing treatment since his disability score remains high. ...”

[Appellant’s chiropractor #1] provided a report dated January 24, 2010, in which he noted that the Appellant had been receiving chiropractic adjustments as well as the services of a physiotherapist. In addition, he was exercising regularly. [Appellant’s chiropractor #1] noted on page 3 of his report:

“He will require continued therapy for the next 2-3 years with frequency varying between weekly to biweekly depending on his progress.”

[Appellant’s doctor #2] also referred the Appellant to a rheumatologist, [Appellant’s rheumatologist], who provided a report dated August 11, 2011. [Appellant’s rheumatologist] examined the Appellant and provided the following opinion:

“Impression and Plan: I do not see any rheumatological problems complicating [the Appellant’s] condition. He was involved in an auto/pedestrian accident three years ago. It appears that he sustained a head injury and bony and soft tissue contusions to his neck and back. There is no specific treatment for these aside from what he is already doing. The treatment would be geared at optimizing the level of function through activity modifications, exercises, modalities like physiotherapy, chiropractor, massage and acupuncture and medications when needed.”

As can be seen, all of the physicians who were treating the Appellant were advocating a multi-disciplinary approach to his condition, involving various modalities of treatment. This is consistent with the initial assessment of [Appellant’s neuropsychologist], who, as noted above, recommended both physical and psychological treatment for the Appellant.

[Appellant’s neuropsychologist’s] reports were reviewed by [MPIC’s psychologist], psychological consultant with MPI’s Health Care Services. In his report dated July 7, 2009, [MPIC’s psychologist] stated as follows:

“Based on the review of the file documentation, it would appear that the claimant did develop a chronic pain disorder with both psychological factors and a general medical

condition as a result of the MVA in question. This is indicated by [Appellant's neuropsychologist] in his report. [Appellant's neuropsychologist] also indicates that the claimant does require pain management counselling and this was started in [city #1] as indicated by the chart notes [of [Appellant's psychologist]]. ...”

After obtaining a progress report from [Appellant's psychologist] dated September 4, 2009, in which she recommended continuing treatment, [MPIC's psychologist] provided a further opinion dated January 6, 2010. In that report, [MPIC's psychologist] opined that “the psychological treatment suggested by [Appellant's psychologist] would be considered medically required ...”. [MPIC's psychologist] also stated “[Appellant's psychologist] also suggests that a referral to a pain program may be appropriate and therefore a discussion with the case manager and the writer [i.e. [MPIC's psychologist]] regarding this possible referral should occur.” It appears, however, that such a discussion either did not take place at that time or if it did, no referral was made at that time.

As noted, continuing psychological treatment sessions were approved. [Appellant's psychologist] provided a further progress report dated May 17, 2010, in which she noted of the Appellant that “It is not possible to separate the impact of his physical condition on his psychological functioning”.

[MPIC's psychologist] provided a further report dated June 11, 2010. In that report, he stated as follows:

“Based on the review of the file documentation, it is suggested that the case manager should strongly consider sending the claimant to a pain clinic in [city #1] for further assessment regarding his ongoing physical and psychological concerns. The claimant continues to appear to have depressive symptomatology and there is no indication that he is receiving medication regarding this. This could be evaluated at a pain clinic by a physician or psychiatrist. Secondly, it appears that there is inconsistent information regarding his physical ability and his ongoing apparent significantly debilitating pain which should be further evaluated by a pain specialist. Furthermore, assessment at a pain clinic may result in further attendance on a regular basis in order to increase his

mobility and help him deal more effectively with his pain symptomatology. Finally, it is also likely that a pain clinic in the [city #1] area could provide psychological intervention to the claimant as well as the other non-psychological care that the claimant requires and therefore ongoing treatment with [Appellant's psychologist] may not be required. Therefore, it is suggested that the case manager discuss the ongoing management of this claim with the writer.”

It appears that no action was taken at this time either regarding [MPIC's psychologist's] recommendation regarding the referral to a pain clinic.

Concurrent with the psychological consultant from MPIC's Health Care Services ([MPIC's psychologist]) reviewing the Appellant's psychological and medical issues arising from his pain disorder, the medical consultant from MPIC's Health Care Services ([MPIC's doctor]) also reviewed the Appellant's file and provided a report dated July 21, 2009. In that report, [MPIC's doctor] concluded as follows:

1. “[The Appellant] has recovered from the medial conditions arising from the incident in question to the extent that further supervised care is not medically required in the management of the conditions.
 2. The medical evidence does not indicate [the Appellant] has a physical impairment of function arising from the incident in question that in turn negatively affects his ability to perform gainful employment, daily activities, and/or recreational activities.
- ...”

As a consequence of the above report, MPIC terminated the funding for the Appellant's physiotherapy, chiropractic and acupuncture treatments after August 6, 2009.

Notwithstanding the conclusions of [MPIC's doctor], however, the panel notes that the Appellant had been diagnosed as having a pain disorder with a medical condition, and that diagnosis had not changed. As noted above, MPIC's own consultant, [MPIC's psychologist], opined on June 11, 2010, that the Appellant should be referred to a pain clinic because “it could provide

psychological intervention to the claimant as well as the other non-psychological care that the claimant requires”. This recognition that other modalities of treatment, beyond psychological treatment, were medically required is consistent with the opinions of the Appellant’s treating physicians, such as [Appellant’s doctor #2], who had known the Appellant since he was a child, and had treated him before and after the motor vehicle accident.

The Appellant was eventually referred by MPIC for an independent psychological assessment to [independent psychologist], who provided a report dated June 7, 2012. [Independent psychologist] came to the same conclusion as [Appellant’s neuropsychologist] and [Appellant’s psychologist] and diagnosed the Appellant as having a pain disorder with physical and psychological factors. He further found as follows:

“The causes of the psychological condition arise in part from the proximate influence of the initial injuries suffered in the accident in question. Perpetuating causes include a preponderance of passive rehabilitation measures that reinforce this patient’s determination to avoid unnecessary movement and the much dreaded “back lock-up”. He has received some well-meaning family support for display of such behaviors, and he has taken a leading role in selection of largely passive rehabilitation and other medical or alternative therapies.”

[Independent psychologist] noted that:

“It is not unusual for Pain Disorder patients to present physical and psychological symptoms that seem grossly in excess given the claim incident, so in that regard [the Appellant] is not unusual. However he is unusual in his aversion to analgesics and in the amount of time he spends lying down. Pain clinic education and rehabilitation programs are best for reforming that type of behavior.”

[MPIC’s psychologist] of MPIC’s Health Care Services reviewed [independent psychologist’s] report and provided his own report dated January 9, 2013. He agreed that the Appellant should be referred to a pain clinic for a full-time program in order to see what benefits could be obtained from this treatment approach. Accordingly, as noted above, the Appellant went to the [pain clinic] in [city #1], funded by MPIC. The panel notes that although [MPIC’s psychologist] had

first suggested a referral to a pain clinic in his report of January 6, 2010, the Appellant was not sent to [pain clinic] until April 18, 2013, for assessment, with the program starting in May, 2013.

The [pain clinic] is a multi-disciplinary program at which the focus was on assisting the Appellant in coping with his pain disorder. It should be noted that the Appellant was initially intended to be there for two weeks. To the credit of MPIC, when it was observed that progress was being made, his attendance was then extended for ten days and then was extended again. The Appellant attended in total for 43 days in residence, for a total of nine weeks of treatment.

As noted from the Appellant's testimony, various treatment modalities were employed at [pain clinic], including physiotherapy, athletic therapy, kinesiology and acupuncture. A progress report from [pain clinic] dated May 31, 2013, reports progress in many areas, as follows:

“From a physical and functional perspective, there has been improved flexibility and strength in his lower spine and hips. [The Appellant] has also made significant gains in improving his overall activity tolerance, while also showing very good shifts in his disability perception (where he appears to have more confidence in his abilities to improve his function over more realistic timelines). From a behavioural perspective, [the Appellant] reports some difficulty in coping with challenging emotions and experiences disturbed sleep. [The Appellant] however, is actively working towards improving his quality of sleep and appears to be using coping strategies to better manage his mood. He has started an online brain training program to assist with his reported cognitive challenges (e.g. memory, concentration, attention).”

A further progress report dated June 14, 2013 indicates additional progress as follows:

“[The Appellant] has continued to show excellent engagement and effort with his program and although functional and physical progress may be considered slow, he has made considerable strides in moving forward (when one considers the length of time since injury and that he spent most of his day in lying prior to the program). [The Appellant] continues to approach symptom management actively, and has also used active strategies to positively impact his sleep and mood. In light of progress to date, the referrer has requested a program extension with the focused goal of maximizing physical and functional capacities. The team is in support of an extension, and feels that more significant gains are still to come. ...”

The discharge report from [pain clinic] is dated July 12, 2013, and indicates his additional progress as follows:

“Functionally, [the Appellant] has made excellent gains through his 9 week Pain Management Program. Most notably, he has demonstrated good tolerance for the 6-hour program day and made significant strides with his sitting tolerance (now at 25 minutes vs 5 minutes at intake). Additionally and importantly, there also seems to have been a very good shift in disability perception where [the Appellant] hopefully now sees he does not need to settle for employment that he can perform in a lying position (which he was reporting at intake). From a physical perspective, there has been a significant degree of improvement in his spinal flexibility tests and overall strength. [The Appellant] had expressed frequent concerns about new symptoms and he was at times possibly observed to be overly attentive to the minute details of his movements. However, there has been some progress noted by the team in regards to his perception of threat. At this stage, based on his postural tolerances, a return to school seems reasonable. As for his sitting tolerance, it progressively had improved over the past several weeks on a consistent basis and as such, further positive changes are reasonably expected. By challenging his perceived limitations, through self-awareness techniques such as relaxation and mindfulness, further functional and physical gains will likely occur. From a behavioural perspective, [the Appellant]’s mood appears to have improved and he has been utilizing several mood and pain management strategies. His sleep has improved and he has cited improvement in his cognitive abilities.”

As can be noted, with the benefit of a multi-disciplinary approach, including occupational therapy, physiotherapy as well as psychological intervention, the Appellant made significant gains through the course of his treatment at [pain clinic]. This treatment had been earlier recommended by [Appellant’s neuropsychologist] in 2010 and while it appears to have been recommended by [MPIC’s psychologist] in 2010 it was not pursued by MPIC until 2013. In the intervening years, the Appellant sought multi-disciplinary treatment on his own, pursuing physiotherapy treatments, chiropractic treatments and acupuncture treatments from various medical professionals with the approval and support of his general practitioner and other treating physicians. As [Appellant’s psychologist] noted, it is not possible to separate the physical components of the Appellant’s injuries from the psychological components of his pain disorder. Accordingly, while there is some conflicting evidence, the panel finds that the weight of all the evidence establishes that the physiotherapy treatments, chiropractic treatments and acupuncture

treatments, which the Appellant received and which MPIC had been paying for prior to August 6, 2009, continued to be medically required thereafter.

Kinesiology:

In addition to physiotherapy treatments, chiropractic treatments and acupuncture treatments, the Appellant also received kinesiology treatments while in [city #1]. It appears that these treatments were received between April, 2010 and December, 2011. However, the Appellant did not adduce any evidence regarding these kinesiology treatments (apart from the dates and amounts) and there is no documentary evidence on the indexed file which would allow the panel to make an assessment as to the nature of the services provided to the Appellant by the kinesiologist, or the success of those services. Accordingly, the panel finds that the Appellant has not met the burden of establishing, on a balance of probabilities, that the kinesiology treatments he received were medically required.

Medical Aids and Supplies:

Similarly, the Appellant did not adduce any evidence to establish that the adjustable bed and water walking belt which he purchased had been prescribed or recommended by any of his health care practitioners. Accordingly, the expenses which he incurred for the items cannot be considered necessary or advisable and therefore there is no entitlement to reimbursement for such expenses under the MPIC Act or Regulations.

Medical Reports:

The Appellant has been reimbursed the amount of \$250 each for three reports (\$750 in total) that he submitted in support of his appeal. He is seeking to be reimbursed for an additional amount with respect to two of those reports, to cover the actual cost to him of those reports. However,

the language of section 43 of Manitoba Regulation 40/94 (as it applied at the relevant time) is clear: MPIC is authorized to reimburse an Appellant to a maximum amount of \$250 in respect of a medical report.

In certain circumstances, the Commission may order a report and pay for the full cost of that report, under the provisions of subsection 183(4) of the MPIC Act; however, those circumstances do not apply here. Where an Appellant seeks to have the Commission fund the cost of a medical report, the Appellant is generally required to come before the Commission and request that the Commission order the report (i.e. to request the funding prior to preparation of the report). In this case, the reports were apparently sought out by the Appellant and received by him, and reimbursement was sought from MPIC thereafter. Moreover, the Appellant did not adduce any evidence before the panel with respect to the reports or the invoices in question. Accordingly, the panel finds that the Appellant is not entitled to any further reimbursement with respect to those reports.

Personal Care Assistance Benefits:

As noted above, MPIC funded personal care assistance (“PCA”) benefits for the Appellant for a period of time after the motor vehicle accident. Subsection 131(1) of the MPIC Act provides for entitlement to PCA benefits where a claimant is unable to care for himself or to perform the essential duties of everyday life without assistance. Section 2 of Manitoba Regulation 40/94 prescribes the parameters of that assistance, including how it is to be evaluated. A claimant must receive an assessment score of 9 in order to be entitled to PCA benefits. In other words, it is possible to be unable to do certain tasks and yet still not receive PCA benefits.

Various PCA assessments were conducted of the Appellant's needs shortly after the accident and on a periodic basis thereafter. As mentioned, the Appellant was initially entitled to PCA benefits. On July 2, 2008, a PCA assessment was conducted by occupational therapist [Appellant's occupational therapist #2]. This assessment gave the Appellant a score of 12, thus entitling him to PCA benefits of \$538 per month. On September 25, 2008, a further PCA assessment was conducted by occupational therapist [Appellant's occupational therapist #1]. This assessment gave the Appellant a score of three, thus disentitling him to PCA benefits. The case manager issued a decision letter to the Appellant dated October 6, 2008, advising him that he was no longer entitled to PCA benefits, effective as of October 10, 2008.

The Appellant disagreed with the October 6, 2008, decision of the case manager terminating his PCA benefits and filed an Application for Review with the Internal Review office. By letter dated November 23, 2009, the Internal Review Officer issued a decision upholding the decision of the case manager that the Appellant was no longer entitled to PCA benefits as of October 10, 2008. No appeal was filed to the Commission from that Internal Review decision.

Before receiving the November 23, 2009, decision from the Internal Review Officer, counsel for the Appellant contacted the case manager on February 4, 2009, and requested that a new assessment for PCA benefits be done. The case manager's notes from that day state as follows:

"I explained that the decision has been made on the medical info on file and they have pursued IRO [Internal Review Office]. Unless IRO disagrees with the decision, no further PCA assessment will be done.

[Text deleted] [counsel for the Appellant] explained that they were not expecting the PCA to be back dated, but that a new one for benefits now is being requested. I noted that there is no new medical information to support a need for a PCA assessment. [Appellant's legal counsel] will check with [the Appellant] to see if he has seen anyone that can recommend or support this need. I explained that the medical information must be objective and that any new medicals would be reviewed by HST. He understood."

The case manager did ask MPIC's Health Care Services' consultants to review the matter. The medical consultant from MPIC's Health Care Services, [MPIC's doctor], reviewed the Appellant's file and provided a report dated July 21, 2009, in which he concluded in part as follows:

“The medical evidence does not indicate an updated personal care assistance assessment needs to be performed in order to assess functional limitations [the Appellant] might still experience as a result of the incident in question (it is not medically probable that [the Appellant] has a functional limitation arising from the incident in question for which personal care assistance would be viewed as being medically required).”

The psychological consultant from MPIC's Health Care Services, [MPIC's psychologist], also reviewed the Appellant's file. He provided a report dated July 7, 2009, in which he concluded in part as follows:

“With regard to the issue of personal care assistance, it is rare that an individual requires such intervention for a psychological condition. In this case, a pain disorder would not appear to warrant such assistance. ...”

The case manager issued a decision dated August 21, 2009, stating that “the medical evidence does not indicate that you have a physical or cognitive impairment for which personal care assistance would be medically required”. (The panel notes that this decision predates the Internal Review decision, referred to above, dated November 23, 2009, which denied the Appellant's appeal of the PCA assessment by occupational therapist [Appellant's occupational therapist #1] and it is unfortunate that there were two similar matters proceeding simultaneously.) The Appellant sought Internal Review of the decision not to issue a new PCA assessment, which was denied by the Internal Review Officer by letters dated July 30, 2010 and January 27, 2012. The Appellant now appeals those decisions to the Commission.

Notwithstanding that MPIC was no longer providing funding, the Appellant continued to use the services of [PCA service provider] to provide PCA services, both in [city #3] and after he moved to [city #1]. Counsel for the Appellant noted that the Appellant incurred expenses of, on average, approximately \$2,500 per year for these services. The Appellant sought reimbursement of these expenses, but the only issue properly before the Commission is whether the Appellant is entitled to a reassessment of his PCA needs, or, in other words, a new assessment.

The Appellant has argued that the PCA assessment completed on September 25, 2008, by the occupational therapist [Appellant's occupational therapist #1] was biased and should be disregarded. However, no evidence of bias was adduced before the panel. [Appellant's occupational therapist #1] was not called as a witness, nor was another occupational therapist called as a witness to contradict anything in her assessment document. Although the Appellant and members of his family testified as to his difficulties with certain daily functions, no witness, such as an occupational therapist, was called to give independent evidence as to the Appellant's functional ability to perform his activities of daily living. Although the Appellant did pay for his own occupational therapy assessment and obtain a report from [occupational therapy consulting company] dated April 20, 2009, which recommended certain home management assistance, this document does not address all matters required to be addressed under the MPIC Regulations and does not address any of the concerns that the Appellant has raised with respect to the PCA assessment document prepared by [Appellant's occupational therapist #1]. The [occupational therapy consulting company] report contains information based almost exclusively on subjective reports from the Appellant and in any event indicates that the Appellant is "independent for all personal care tasks using various adaptive aids (e.g. dressing, bathing, hygiene, eating) [and] ... independent for all functional mobility tasks (e.g. transfers, indoor, outdoor)" The report does note that the Appellant's mother does all of the cooking and cleaning and that "he reports that he

is unable to participate in these tasks due to pain with picking up items". However, as noted earlier, the inability to perform some tasks does not necessarily entitle an individual to PCA benefits.

Based on the totality of the evidence, the panel finds that the Appellant has not met the burden of establishing, on a balance of probabilities, that a new PCA assessment is required. He has not established that [Appellant's occupational therapist #1's] PCA assessment should be disregarded by the Commission, nor has he adduced any new, objective evidence that would indicate that his functional abilities have materially changed since the time of the assessment by [Appellant's occupational therapist #1].

Disposition:

Accordingly, based on the foregoing, the panel finds that the physiotherapy treatments, chiropractic treatments and acupuncture treatments received by the Appellant after August 6, 2009 were medically required. As noted at the outset of this decision, MPIC indicated that it has been and is prepared to pay the Appellant's expenses for physiotherapy treatments, chiropractic treatments and acupuncture treatments that are medically required. We are content to dispose of this case on that basis and the Appellant shall accordingly be entitled to reimbursement of expenses incurred for such treatments received to date and to funding for such ongoing treatments as may continue to be medically required.

The panel therefore sends the matter back to the case manager for determination of payment for such expenses together with interest. The Commission will retain jurisdiction in the event that the parties are unable to agree upon the quantum of benefits which are owing to the Appellant.

In all other respects, the decisions of the Internal Review Officer dated July 30, 2010 and January 27, 2012 and the decision of the Case Manager dated October 7, 2014 are confirmed and the Appellant's appeal is dismissed.

Dated at Winnipeg this 23rd day of June, 2015.

JACQUELINE FREEDMAN

LINDA NEWTON

SANDRA OAKLEY