Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-62

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Ms. Barbara Miller** **Mr. Wilson MacLennan**
APPEARANCES:	**The Appellant, [text deleted], was represented by [Appellant's representative];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.**
HEARING DATE:	**December 19, 2002, May 2, 2003, May 6, 2003**
ISSUE(S):	**1. Entitlement of the Appellant to Permanent Impairment benefits for head injury;** **2. Entitlement to reimbursement for seizure medication;** **3. Entitlement to Income Replacement Indemnity benefits;** **4. Entitlement to physiotherapy benefits;** **5. Entitlement to funding for left knee brace;** **6. Entitlement to reimbursement for Tachycardia drugs;** **7. Entitlement to reimbursement for cost of mattress;** **8. Entitlement to reimbursement for cost of tree removal.**
RELEVANT SECTIONS:	**Sections 110(1)(a), 110(2)(d), 127 and 136(1)(a) of the Manitoba Public Insurance Corporation Act ("MPIC Act") and Manitoba Regulation 40/94, Sections 38 and 5(a)**

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

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on November 21, 1996. The Appellant was driving the motor vehicle, accompanied by his wife, down [text deleted]

approaching [text deleted] when the front end of his car collided with the driver's side of another car and, as a result thereof, the Appellant suffered bodily injuries.

In due course the Appellant made Application for Compensation from MPIC who rejected these claims and the Internal Review Officers, in several Internal Review decisions, rejected the Appellant's Application for Review and confirmed the decisions of the case managers. As a result thereof the Appellant appealed the following decisions of the Internal Review Officers:

1. Entitlement of the Appellant to Permanent Impairment benefits for head injury;
2. Entitlement to reimbursement for seizure medication;
3. Entitlement to Income Replacement Indemnity ("IRI") benefits;
4. Entitlement to physiotherapy benefits;
5. Entitlement to funding for left knee brace;
6. Entitlement to reimbursement for Tachycardia drugs;
7. Entitlement to reimbursement for cost of mattress;
8. Entitlement to reimbursement for cost of tree removal.

1. Entitlement of the Appellant to Permanent Impairment benefits for head injury

The issue in respect of this appeal relates to the following issues:

A. Whether the Appellant suffered a head injury as a result of the motor vehicle accident;

B. If the Appellant did suffer a head injury as a result of the accident, whether this head injury caused the brain seizures which the Appellant is complaining about.

Accident Scene

Witnesses who observed the motor vehicle accident contacted 911 and, as a result, an ambulance was immediately sent to the scene of the accident. [Text deleted], the paramedic employed by the Ambulance Service, testified at the appeal hearing in respect of an Ambulance Report he had prepared on the date of the accident, which Report was filed in evidence before the Commission.

[Ambulance Service paramedic] is a licensed practical nurse with twenty years experience in the health care field. He testified that he initially served as a medic in the military and has been a paramedic with the [text deleted] Ambulance Service for the past thirteen years.

The Ambulance Report which [Ambulance Service paramedic] prepared indicates that the ambulance service received a call for assistance at 1:52 p.m., the ambulance was en-route to the motor vehicle accident at 1:55 p.m. and arrived at the scene of the accident at 1:59 p.m. The Commission notes that a period of seven minutes elapsed from the time of the call for assistance of an ambulance and the attendance of [Ambulance Service paramedic] upon the Appellant.

The Appellant testified at the appeal hearing that in his view a period of approximately two minutes would have elapsed between the time the witnesses to the accident observed the accident and called the 911 operator, who in turn called the ambulance service. The Commission finds that this estimate of time is reasonable and therefore determines on a balance of probabilities the ambulance arrived at the scene of the accident approximately 9 to 10 minutes after the accident occurred.

The ambulance attendant, [text deleted], testified at the appeal hearing that his practice upon arriving at the scene of an accident would have been to immediately talk to the Appellant in order to assess his condition and check his pulse rate. [Ambulance Service paramedic's] Ambulance Report indicates that the Appellant was conscious upon [Ambulance Service paramedic's] arrival, and that he was able to communicate with the Appellant who appeared to be normal. The Ambulance Report also notes that the Appellant had a Glasgow Coma Scale of 15 which indicates the Appellant was fully alert and oriented.

The Ambulance Report further notes that the Appellant complained of soreness to his upper chest, shoulder, neck, back, left leg and numbness to his left leg. This report does not indicate the Appellant complained about a head injury or headaches, that his head hit the window or roof of the interior of the car, or that he was unconscious as a result of the motor vehicle accident. The report also does not indicate that [Ambulance Service paramedic] observed any bleeding or bruising on the Appellant's head.

[Ambulance Service paramedic] testified that if there was any question of the Appellant being unconscious he would have checked the Appellant's blood sugar at that time and he did not do so. The Commission therefore notes that, having regard to the testimony of [Ambulance Service paramedic] and having regard to his Ambulance Report that, on the balance of probabilities, the Appellant was seen by [Ambulance Service paramedic] approximately 9 to 10 minutes after the accident occurred and at that time the Appellant was conscious, alert and appeared to be normal.

The ambulance attendants were unable to remove the Appellant from the motor vehicle when they arrived at the scene and as a result a [text deleted] Fire Department Responder Pumper Truck was sent to the scene of the accident. The [text deleted] Fire Department Report in respect to this incident indicates that the Fire Department received the alarm to attend at the scene of the accident at 2:07 p.m. and arrived sometime thereafter but unfortunately there is no record on the report when the firefighters attended the scene of the accident.

Upon arriving at the scene of the accident, the firefighters assisted in removing the Appellant from the motor vehicle sometime after 2:07 p.m. and prior to the departure of the Appellant in an ambulance from the scene of the accident at 2:31 p.m. The Commission has determined, on the balance of probabilities, that the accident occurred at 1:50 p.m. on November 21, 1996. As a

result the call to the firefighters, which occurred at 2:07 p.m., was made approximately 17 minutes after the accident occurred, and sometime thereafter the firefighters arrived at the scene of the accident. The firefighters assisted in the removal of the Appellant from the motor vehicle and the Ambulance Report indicates that the ambulance left the scene of the accident at 2:31 p.m., approximately 41 minutes after the Commission has determined the accident occurred. It should further be noted that between the time the firefighters received the call at 2:07 p.m., approximately 17 minutes after the accident occurred, a further 24 minutes elapsed before the Appellant was taken to the hospital at 2:31 p.m.

[Hospital #1]

The Appellant was taken to the Emergency Room of the [hospital #1] and the Emergency Report indicates that the Appellant was seen by [Appellant's ER doctor #1] at 2:55 p.m. The Emergency Report indicates that the Appellant was "*alert 0x3"* and that there was no cranial lesion. [Appellant's ER doctor #1] attended upon the Appellant at the [hospital #1] and provided a report to MPIC dated February 25, 1997 wherein he stated:

> On examination, [the Appellant] was alert and fully oriented. There was no external cranial lesion (laceration or hematoma.) He had a cervical collar on. His Glasgow Coma Score was 15. He had mild tenderness of his cervical spine. He had mild right anterior chest wall tenderness. His chest was clear to auscultation, and heart sounds were normal. His abdominal exam revealed some left lower quadrant tenderness without guarding or rebound, and bowel sounds were normal. Pelvis was nontender. His rectal exam was normal. Neurologic findings were confined to numbness of the left medial leg below the knee.

[Appellant's ER doctor #1] noted in his Emergency Report that the Appellant "*does not remember accident*". The Appellant had complained about chest and back pains and, as a result, X-Rays were taken of his cervical spine and chest and were normal. Since the Appellant complained about leg numbness [Appellant's ER doctor #1] referred the Appellant to [Appellant's neurologist #1] for his assessment of the Appellant.

[Appellant's neurologist #1's] report, dated November 21, 1996, indicates that he saw the Appellant in Emergency at 6:30 p.m. [Appellant's neurologist #1] notes in his report that the Appellant "*thinks he was momentarily rendered unconscious, but remembers the collision*". [Appellant's neurologist #1] further notes that the Appellant was awake, alert, oriented and that the Appellant had no pain in his neck but had diffuse spinal pain. [Appellant's neurologist #1] concluded his report by stating:

> It is my impression at the moment there is no evident significant neurologic deficit at this time. If there is ongoing concern I would be glad to discuss and further evaluate but at the moment I think he is doing well neurologically.

The Appellant was advised by [Appellant's ER doctor #1] to remain in the hospital overnight for observation for any further neurologic symptoms or any hemodynamic instability. The Appellant declined this advice and was released from hospital that same day.

Highway Traffic Act Report

On November 22, 1996, one day after the accident, the Appellant completed a Traffic Accident Report in which he stated:

> I was driving with my wife West on [text deleted], approaching [text deleted]. I was in the curb lane when a vehicle travelling South on [text deleted] slid out in front of me. I tried to stop but couldn't and I couldn't swerve into the other lane because there was a large truck there. The front of my car hit the drivers side of the other car. The next thing I know I was taken to the hospital by an ambulance.

The Appellant's recollection of the accident as set out in this report are consistent with his comments to [Appellant's neurologist #1] that he remembered the collision, but are inconsistent with respect to his comment to [Appellant's ER doctor #1] that he did not remember the accident.

[Appellant's Doctor #1]

The Appellant saw his personal physician, [text deleted], on November 25, 1996 four days after the motor vehicle accident. [Appellant's doctor #1] provided a narrative report to MPIC dated April 30, 1997. In this report he states that the Appellant complained that as a result of the accident he had soreness across the chest, left lower abdomen, left knee, left ankle and neck together with exacerbation of lower back pain which he had for many years. [Appellant's doctor #1] examined the Appellant on November 25, 1996 and this examination "*revealed tenderness of the anterior chest wall, tenderness of the left knee medially with satisfactory range of motion, tenderness of the left ankle medially and laterally with satisfactory range of motion, tenderness to the left and right of the cervical spine, diminished range of motion as well as ecchymosis of the left wrist palmar aspect".*

It should be noted that the Appellant did not inform [Appellant's doctor #1] that as a result of the accident he struck his head against the roof of the car resulting in a head injury. [Appellant's doctor #1] noted no physical injury to the Appellant's head, nor did the Appellant complain about any headaches. [Appellant's doctor #1] also reviewed [Appellant's neurologist #1's] consultation report wherein [Appellant's neurologist #1] noted no evident significant neurologic deficit.

[Appellant's doctor #1] reported that he saw the Appellant on December 2, 1996, December 16, 1996 and January 5, 1997. In respect of the December 2, 1996 meeting, [Appellant's doctor #1] reports that he received a number of complaints from the Appellant, none of which related to the Appellant's head. At that meeting [Appellant's doctor #1] recommended the Appellant start physiotherapy and arrangements were made for this to occur at the [text deleted]. In respect of the December 16, 1996 meeting, the Appellant again made several complaints to [Appellant's

doctor #1] but none of them related to a head injury. On January 6, 1997 the Appellant reported to [Appellant's doctor #1] that there was a buzzing in his right ear, which had begun on January 5, 1997.

Application for Compensation

The Appellant made an application to MPIC for compensation, dated December 17, 1996, and described his injuries from the accident as:

> Back and numbness in legs and arms make it hard to even walk. Dizzy spells. Other tests to be done. Using cane. Headaches. Internal pain.

It should be noted that the Appellant does not indicate that he was rendered unconscious as a result of the accident or that he suffered from a head injury.

January 17, 1997 Incident

[Appellant's doctor #1], in his report to MPIC dated April 30, 1997, indicated that he saw the Appellant on January 20, 1997, three days after the Appellant had been in the [hospital #2] Observation Unit following a syncopal episode on January 17, 1997. The Appellant had apparently fallen at home and had hit his head against the floor. A CT scan of the brain had been performed at the Hospital and indicated the brain was within normal limits. [Appellant's doctor #1] referred the Appellant to [text deleted], a neurologist, for assessment, in order for [Appellant's neurologist #2] to determine if there was a neurological problem such as a stroke.

On January 21, 1997 the Appellant met with the case manager for the purpose of completing missing information from his Application for Compensation. During the course of the discussion, the Appellant informed the case manager that he was still having difficulty with headaches and that he later learned that he was unconscious for about 14 minutes following the

motor vehicle accident. The case manager noted that this was the first occasion in information in respect of unconsciousness as a result of the motor vehicle accident was provided by the Appellant to MPIC, being a period of approximately two months since the occurrence of the motor vehicle accident. The Appellant further informed the case manager on January 17, 1997 that he lost his balance and fell to the ground hitting his head and that he was taken by ambulance to the [hospital #2], that some tests were taken and that he was discharged from the hospital on January 20, 1997.

As a result thereof, the case manager wrote to the Emergency Department of the [hospital #2] in respect of this incident. In this letter the case manager states:

> I understand, on January 17, 1997, [the Appellant] had an episode of dizziness and/or blackout at his residence and was rushed to the Emergency Ward at your hospital where he was admitted. [The Appellant] indicates tests were performed, and he was subsequently discharged on January 20, 1997.
>
> As a result of the aforementioned motor vehicle accident, [the Appellant] indicates he was rendered unconscious for approximately 14 minutes time. Accordingly, I am inquiring whether this recent episode is related to his motor vehicle accident injuries.

In reply, [text deleted], Emergency Physician at the [hospital #2], advised MPIC that he attended upon the Appellant on January 17, 1997. [Appellant's ER doctor #2] stated in his report:

> On the morning of presentation, he had actually had a loss of consciousness of approximately five to ten minutes duration. As you are aware, he had a motor vehicle accident on November 21, 1996, at which time he had been knocked unconscious.

[Appellant's ER doctor #2] indicated that in respect of the January 17, 1997 incident several investigations were performed on the Appellant during his stay in the observation unit and that a CT Scan of the Appellant's brain was normal. [Appellant's ER doctor #2] further stated:

> It seems unlikely that [the Appellant's] presentation on January 17, 1997 was related to his MVA of November 21, 1996. However, a sequelae of concussion can present at a delayed time frame.

[Appellant's Neurologist #2]

[Text deleted], a neurologist, saw the Appellant on a referral from [Appellant's doctor #1] on February 26, 1997. [Appellant's neurologist #2], in reply to MPIC's request for information, reported that on February 26, 1997 the Appellant informed him that he was involved in a motor vehicle accident on November 21, 1996 and, as a result of the accident, the Appellant informed [Appellant's neurologist #2] that *"He was concussed he feels for a few minutes".* [Appellant's neurologist #2] conducted a neurological examination and had an EEG performed on the Appellant. [Appellant's neurologist #2] further states in his report:

> My initial impression was that the blackout in January was likely pre-syncope with secondary concussion.
>
> My main reason for seeing him was because of the blackout. However, seizure was raised as a possibility so EEG was ordered. This showed left temporal epileptiform activity and the patient was started on Dilantin. It is possible the head injury from the accident was the etiology. The only past history is that he was a boxer but had never been knocked out and had never had seizures prior to the accident. (underlining added)

In a note to file dated June 6, 1997 the case manager indicates that on May 29, 1997 he contacted the Appellant who advised the case manager he was informed by [Appellant's neurologist #2] "*concerning the test results which indicate he received brain damage and is suffering from seizures currently*". The Appellant further informed the case manager:

> [Appellant's neurologist #2] identified the problem area behind the left temple. As well, according to [the Appellant], [Appellant's neurologist #2] identified nerve damage on the outside of his left leg which is causing him weakness and the episodes he has experienced of his leg giving out. As well, he indicated possible nerve damage in the back area. According to the claimant, [Appellant's neurologist #2] is satisfied all above symptoms are as a direct result of the motor vehicle accident. (underlining added)

On August 12, 1997 the case manager attended at the Appellant's home and discussed the Appellant's involvement in the motor vehicle accident. In his note to file, the case manager reports:

> The next thing he remembers is waking up to firemen trying to get him out of the car. They figure he was unconscious for approximately 10 to 15 minutes. He had a large bruise to the left top temple area, which he figures hit the frame of the roof with the side of his head. (underlining added)

As a result of this information the case manager wrote to [Appellant's neurologist #2] on September 4, 1997 and informed [Appellant's neurologist #2] that the Appellant claims that he bumped his head on the roof liner of his car and he was apparently unconscious for 10 or 15 minutes. He further advised [Appellant's neurologist #2] that the Appellant recalled waking up to firemen attempting to get him out of the car.

The case manager provided [Appellant's neurologist #2] with [Appellant's ER doctor #1's] reports, dated November 29, 1996 and February 25, 1997, the report of [Appellant's ER doctor #2] dated February 11, 1997 and the two reports of [Appellant's doctor #1] dated April 22, 1997 and April 30, 1997. The case manager requested that:

(a) having regard to [Appellant's neurologist #2's] own examinations, and the enclosed medical reports, whether in his opinion there was a relationship with the Appellant's ongoing problems and the motor vehicle accident; and

(b) whether the Appellant's ongoing medical problems resulted in the Appellant being unable to return to gainful employment.

In a note to file dated September 10, 1997 the case manager notes that in a discussion with the Appellant on September 5, 1997 the Appellant informed him he had seen [Appellant's neurologist #2] who told him he will never be returning to any gainful employment because of the seizure activity that was going on, that the seizures would continue for the rest of his life and *"are a result of the motor vehicle accident re: blow to the head"*.

[Appellant's neurologist #2] wrote to the case manager on September 24, 1997 in response to MPIC's request for information in the case manager's letter dated September 4, 1997. [Appellant's neurologist #2] indicated that he had reviewed the correspondence provided to him and stated that he had initially seen the patient because of the patient's seizure and back pain and further stated:

> With regards to the seizure, it is possible that the head injury from the accident was the etiology, but of course we cannot be certain. Certainly that is the only known head trauma of significance that he has had in the past. (underlining added)

[Appellant's Neuropsychologist]

As a result of the case manager's discussions with the Appellant in respect of his medical complaints, MPIC requested [text deleted], a neuropsychologist, to review all of the medical information available and to advise MPIC of [Appellant's neuropsychologist's] opinion as to the cause of the Appellant's complaints. [Appellant's neuropsychologist] provided two reports to MPIC dated December 31, 1997 and February 9, 1998. [Appellant's neuropsychologist] in his report to MPIC dated February 9, 1998 states:

> To summarize, my review of the records would indicate that there is no clear evidence that [the Appellant] has indeed sustained a head injury, and thus I do not feel that a neuropsychological assessment would be indicated at present. (underlining added)
>
> Issue #1: Head Injury
>
> Frequently used indications of a brain injury would include the following:
>
> - *Loss of consciousness:* In [the Appellant's] case, the "Ambulance Patient Care Report" of November 21, 1996, does not indicate any loss of consciousness. Indeed, they list [the Appellant] as having a Glasgow Coma Scale of 15, indicating that he was fully alert and oriented. In addition, the "Emergency Room Form" at [hospital #1], also list him as being "alert, Ox3". (And while the neurologic consultation in the ER by [Appellant's neurologist #1] indicated "he thinks that he was momentarily rendered unconscious", we have no verification of this in his ambulance report). Please also note an emergency physician from [hospital #2], who had subsequently seen him two months after the accident, [Appellant's ER doctor #2], had written to

MPI on February 11, 1997 that he had lost consciousness in his motor vehicle accident. He states: "As you are aware, he had a motor vehicle accident on November 21, 1996, at which time he had been knocked unconscious". However, the information that you had provided me does not substantiate this impression, when we examine the direct sources from the ER and the ambulance attendants.

- *Neurologic Exam:* This is described as essentially normal in his neurologic consultation, in which [Appellant's neurologist #1] indicates "It is my impression at the moment there is no evidence of significant neurologic deficit at this time" (November 22, 1996 report).

- *Orientation:* The patient was described as oriented, both by his ambulance attendants, and in the emergency room report. In addition, there are no indications in the records of any confusion, agitation, slurred speech, etc., which would indicate any type of cognitive difficulty.

- *External indications*: There are no indications of direct injury to the head. As an example, his ER report indicates "∅ cranial lesion" while his neurologic consultation does not describe abrasions or other injuries to the scalp. In addition, although occasionally a patient can sustain a brain injury simply as a result of force to other structures, such as facial injuries, jaw injuries, etc., this does not appear to be the case in this situation.

- *Neuroradiologic findings*: In the records that you had submitted, I note that apparently it was not felt necessary to x-ray his skull, or provide a CT of his brain. However, a CT of his brain, conducted after his syncope episode of January 17, 1997, was reported by his family physician, [text deleted], as "within normal limits" (page 3 of [Appellant's doctor #1's] May 26, 1997 report to MPI). (*sic - should be page 2 of [Appellant's doctor #1's] April 30, 1997 report)*

- *Behavior post-injury:* This does not indicate any reports of personality change, disinhibition, apathy, agitation, etc.

- *Retrograde memory*: There was conflicting information as to whether [the Appellant] recalled the accident. In his ER report, it is stated "Does not remember accident". However, [Appellant's neurologist #1's] neurologic consultation conducted in the ER later states that he "remembers the collision". Thus, there is no confirmation of a retrograde amnesia.

- *Diagnoses:* [The Appellant] (sic) did not appear to have been diagnosed by [hospital #1] with a head/brain injury.

Thus, overall, there is no confirmation that [the Appellant] has indeed sustained a brain injury. It is therefore unfortunate that a number of medical records appear to have made this assumption.

Issue #2: Seizure Disorder

You had enclosed three letters that indicated [the Appellant] had subsequently sustained seizures 2 months post-MVA. This includes the letter from [Appellant's ER doctor #2] of February 11, 1997 who had seen him in the ER at [hospital #2]; and the two letters from the neurologist that had seen him over the seizures, [Appellant's neurologist #2] of September 24 and 26, 1997 (*sic – should be September 24 and May 26, 1997*). I understand that on the morning of February 11, he had been unconscious for 5-10 minutes, with a previous history of 3-4 occurrences of near-syncope. The initial diagnosis was of CVA, with [Appellant's ER doctor #2's] opinion that it was unlikely his admission was related to his November 21, 1996 motor vehicle accident. I understand that [the Appellant] had continued experiencing near-syncope, resulting in [Appellant's neurologist #2's] consultations. [Appellant's neurologist #2] states in his September 24th report: "With regards to the seizure, it is possible that the head injury from the accident was the etiology, but of course we cannot be certain" (page 1). He states further on the same page: "I was not sure whether this was seizure activity or not, but felt that we should keep a close eye on it".

RECOMMENDATIONS

1) Since there is no clear indication that a head injury has been sustained, I could not justify proceeding with a neuropsychological assessment at this time. (underlining added)
2) To assist in differential diagnosis, it would be helpful for [Appellant's neurologist #2] to have the same information you had provided me on his initial injury (e.g., ambulance report and ER report), since these records do not substantiate that a head injury had indeed occurred. This may be relevant to [Appellant's neurologist #2's] diagnosis.

[Appellant's Neurologist #2]

On February 19, 1998 the case manager wrote to [Appellant's neurologist #2] providing him with a copy of [Appellant's neuropsychologist's] reports dated December 31, 1997 and February 19, 1998 along with the Ambulance Report and Emergency Room Report. The case manager requested [Appellant's neurologist #2] to review the enclosed reports and to provide any further opinion as to the relationship between the Appellant's present complaints (seizure disorder) and it's relationship to the motor vehicle accident/head injury.

[Appellant's neurologist #2] replied to MPIC in a report dated April 22, 1998:

> This is in response to your letter dated February 19, 1998. I reviewed the Emergency Department Record, [Appellant's neuropsychologist's] reports, the ambulance report, the neurological consultation from his hospitalization at the time of the accident on November 12, 1996.
>
> There is some discrepancy in the reports. The ambulance driver's do report that he was "alert" on their arrival. The emergency doctor from the same day reported that he "does not remember the accident". The neurology consultant reported that "he thinks he was momentarily rendered unconscious, but remembers the collision". I reviewed this with the patient when I saw him in follow-up on 14 April 1998. He says he has only vague recollection of getting in the car that day. He remembers some sort of "flash" just prior to or at the time of the accident. The next thing he remembers is the firemen being present trying to get him out of the vehicle. (underlining added)
>
> I do not think we can sort out exactly what happened. If he did have a concussion, it will have been a mild one. Whether or not this was sufficient to cause a scar which would be responsible for his left temporal abnormality seen on EEG is difficult to say. I do not think I can be certain that that relates directly to the motor vehicle accident but it is possible that it does. (underlining added)

Appellant

On May 4, 1998 the case manager provided the Appellant with the entire medical package for his review and included [Appellant's neuropsychologist's] medical reports. On May 20, 1998 [Appellant's neuropsychologist] wrote to the case manager indicating that the Appellant had called him the previous week with questions about his reports to MPIC. [Appellant's neuropsychologist] further stated that the Appellant advised him that he was gathering further additional information to substantiate that he sustained a head injury in his motor vehicle accident of November 21, 1996. [Appellant's neuropsychologist] indicates that additional information included the following:

> He reported that his own information suggested he had a loss of consciousness of at least 10 minutes, based on his wife's observations. Although he was aware that rescue personnel found him conscious (as per the records I had reviewed) he reported that his information suggested that they had not arrived until after he became conscious. (underlining added)

After receiving [Appellant's neuropsychologist's] report, the Appellant wrote to [Appellant's neurologist #2] on May 21, 1998 and informed [Appellant's neurologist #2]:

. . . .

Ambulance stated that before they got to the accident site it was possible I was unconscious, time would be from the time the person reported to the time they got there, and they pointed out that it could have taken several minutes for some – to phone not knowing if anyone was hurt.

While they got the call at 13:32, and arrived at 13:49 Plus 2 minutes to get set up at which time they say I was awake, while I have the Ambulance report, I find it strange they called the fire dept., they got the call at 14:13, this was the two persons I first saw, not the ambulance staff, along with this my wife said that they did not talk to me till they started getting out of the car. (underlining added)

. . . .

I think the fire dept. put it correctly, that the only person who could have told if I was conscious was my wife, the ambulance staff and the fire dept both stated that they could not say if I was conscious or not because of the time lapse between the impact and their arriving at the site of the accident.

[Appellant's Wife]

The Appellant's wife also wrote to [Appellant's neurologist #2] in a letter dated May 18, 1998 and informed [Appellant's neurologist #2] as follows:

I saw the car going through the stop sign, I told my husband to watch out, but it was to (sic) late.

My husband was unconsciousness, I called by name and tried shaking him, but I could not get him to respond, I stayed with him till the Fire department came, which was some time after the Ambulance. (underlining added)

They never spoke to my husband till the Firemen were there, and it was only at that time did my husband move, I would say he was unconscious for over 10 minutes. (underlining added)

The records show that the Ambulance took 7 minutes to get there and the Firemen 10 minutes more, and the only word ask my husband after that time, where does it hurt? Then they cut off his clothes and got him out of my car, he was put in the Ambulance covered by a sheet, with the back door wide open in 30 below temperature. Attendant from both Ambulance and Fire department all say that they can't tell if my husband was unconscious till they got there.

[Appellant's Neurologist #2]

As a result of receiving these two letters [Appellant's neurologist #2] modified his position on the issue of causation and this is reflected in his letter to MPIC dated June 1, 1998 where he stated:

> [The Appellant] has supplied me with some additional information regarding the accident. I have a letter from him dated May 21 1998. I understand you have a copy of the same letter. On my reading the letter, it would indicate that there are at least 27 minutes or perhaps half an hour that are unaccounted for. Since the ambulance drivers were presumably the first medical people to witness the patient, there is a half hour gap where he says he was unconscious. Indeed, a letter from his wife dated May 18 1998 confirms that he was unconscious. This certainly lends weight to the fact that it was a little more significant head injury, making it more likely that the motor vehicle accident was indeed etiological in causing the left temporal scarring on EEG. (underlining added)

[MPIC's doctor #1]

MPIC's Medical Services Department was requested to review the medical file and advise as to the cause/effect relationship between the Appellant's current complaints and the motor vehicle accident. On March 11, 1999 [MPIC's doctor #1], Medical Director Claims Services Department, provided an Inter-Departmental Memorandum to MPIC dated March 11, 1999. [MPIC's doctor #1] reviewed the reports of the Emergency Response Team who attended at the accident, report of the Emergency Physicians and the Neurologist who attended to the patient at the time of the accident and states:

> **Reviewer Comment**
> Given the information from the Emergency medical technicians, the Emergency physicians, and the neurologist who saw the patient in the acute situation, there is inadequate documentation of either head trauma, or a closed head injury with potential traumatic brain injury to assume that subsequent cranial anomalies would be related to the motor vehicle collision in question.
>
> There is a thorough review of this issue from [text deleted], a neuropsychologist dated February 9, 1998. [Appellant's neuropsychologist's] conclusions are that there is no clear indication that a head injury was sustained by this patient. (underlining added)

[MPIC's doctor #1] also reviewed [Appellant's neurologist #2's] reports and states:

This patient has seen [Appellant's neurologist #2] because of episodes of near fainting. To evaluate differential diagnosis for the near fainting, the patient had an EEG performed, this apparently revealed an epileptiform focus in one of the gentleman's temporal lobes. [Appellant's neurologist #2] clearly identifies that it is possible that this gentleman's motor vehicle collision led to the temporal lobe scarring which has led to abnormal EEG function which may have led to the patient's clinical behavior of near syncope. I am unaware of definitive evidence of this patient having a diagnosed seizure disorder, however.

Reviewer Comment

[Appellant's neurologist #2] identifies a series of possible relationships, but no probable relationships. A series of possible relationships between the patient's motor vehicle collision, his subsequent clinical picture of near syncope, the epileptiform activity on EEG, and potential head injury, however, does not appear probable. (underlining added)

Other Relevant Health Matters

[The Appellant] has been described as a previous boxer. He has also been described as having a cardiac anomaly, paroxysmal supraventicular tachycardia for which he has taken long term medicines. He has some cardiac dysfunction. Both the previous history of boxing, and the cardiac condition could lead to both the near syncope, and the anomaly on EEG based on brain scarring. In my opinion, these two areas are more probably etiological factors than the motor vehicle collision in question. (underlining added)

Internal Review Decision - dated March 3, 2000

The case manager rejected the Appellant's request for an award in respect of Permanent Impairment benefits relating to a brain injury and, as a result, the Appellant made Application for Review of the case manager's decision. In an Internal Review decision dated March 3, 2000 the Internal Review Officer denied the Appellant's request for an entitlement to Permanent Impairment benefits for a head injury on the grounds that there is no evidence that the Appellant suffered a head injury in the collision of November 21, 1996.

Notice of Appeal

The Appellant filed a Notice of Appeal dated March 5, 2001 in respect of the Internal Review Officer's decision which rejected the Appellant's request for an award for a permanent impairment in respect of his head injury.

[Appellant's Doctor #1]

On April 24, 2000 [Appellant's doctor #1] wrote to MPIC and indicated that he last saw the Appellant at his office on April 11, 2000. In this letter [Appellant's doctor #1] states that the Appellant continues to suffer from a seizure disorder which may be related to a head injury suffered in the motor vehicle accident on November 21, 1996. (underlining added)

On June 20, 2000 [Appellant's doctor #1] provided a report to MPIC in which he indicates that he saw the Appellant in his office on June 19, 2000. He reports that the Appellant continued to complain about continuing pain to his left knee since the motor vehicle accident, as well as headaches and a seizure disorder since the motor vehicle accident. [Appellant's doctor #1] further stated that in his opinion the Appellant's "*headaches and seizure disorder seem causally related to the motor vehicle accident and certainly appear to be temporally related to the accident*". (underlining added)

On March 25, 2001 [Appellant's doctor #1] wrote to the Commission indicating he last saw the Appellant on March 15, 2001. The Appellant requested that [Appellant's doctor #1] forward a letter to the Commission in respect of the Appellant's inability to return to his previous work as a courier driver. [Appellant's doctor #1] stated that the Appellant continues to suffer from neck and back pain, stiffness, headaches, and a seizure disorder. In his opinion the Appellant's seizure disorder is related to the accident of November 21, 1996. [Appellant's doctor #1] indicated that his previous letters to MPIC detailed his findings and opinions. (underlining added)

[Appellant's Neurologist #2] – Report of August 9, 2001

On August 9, 2001 [Appellant's neurologist #2] wrote to the Commission and provided a narrative report in respect of his treatment of the Appellant. [Appellant's neurologist #2] states:

> Further information supplied to me by the patient in a letter dated May 21 1998 indicates that there was approximately a half hour before the ambulance arrived. His wife apparently had been present in the car at the time of the accident and estimated that he was unconscious for more than ten minutes. Please refer to my June 1, 1998 letter to MPIC regarding my comments on this. (underlining added)
>
> To summarize, the patient did have some type of head injury. There was some lapse of awareness indicating that it was indeed a concussion. The details as to duration of loss of consciousness are a little bit unclear. Following the accident he did have blackouts, which were felt to be seizures. He had no prior history of seizures. His EEG did show left temporal epileptiform activity, supporting the diagnosis of epilepsy and further indicating a need for Dilantin therapy. Repeat EEGs continue to demonstrate left temporal epileptiform activity. He also had some spells, which could well be partial complex seizures when he had temporarily stopped the medication. This indicates he will likely need the medication on a long-term basis.
>
> My conclusion related to the seizures is that they seem to start shortly after the accident. There was a reasonably significant concussion at the time of the accident. I felt that the accident was the most likely etiology for the seizures. (underlining added)

[MPIC's doctor #2]

On September 6, 2002 [MPIC's doctor #2], MPIC's Medical Consultant, provided an Inter-Departmental Memorandum to MPIC's legal counsel. In this Memorandum [MPIC's doctor #2] reviews [Appellant's neurologist #2's] report dated August 9, 2001 and states:

> **Conclusion**
> [Appellant's neurologist #2] is correct in that it is possible that [the Appellant's] seizure disorder (i.e. epilepsy) is a byproduct of the incident in question. Based on the absence of documentation identifying significant head trauma, that in turn would account for his symptoms, a normal neurological examination shortly after the incident in question, his past boxing history and the EEG findings, it is my opinion that a cause/effect relationship between the seizure disorder and the incident in question is not medically probable. (underlining added)

Appeal Hearing

The relevant sections of the MPIC Act and Regulations in respect of these appeals are:

> **Lump sum indemnity for permanent impairment**

127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than $500. and not more than $100,000. for the permanent impairment.

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:
(d) such other expenses as may be prescribed by regulation.

M.R. 40/94
Medication, dressings and other medical supplies
38 The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

At the appeal hearing the Appellant testified that:

1. he does not recall leaving home prior to the accident nor does he recall the events of the accident.

2. his wife was a passenger in the motor vehicle and advised him that he was unconscious and that he has no personal recollection but assumes that he was unconscious.

3. after the motor vehicle accident the first thing he recalls is seeing two big black figures in front of him.

4. he does not recall going to the hospital by ambulance, vaguely recalls being examined at the hospital but does not recall if he stayed overnight at the hospital and does not recall any conversations with his wife at the hospital.

5. as a result of the motor vehicle accident he did suffer loss of consciousness for a period of time as well as soft tissue injuries to his neck and back.

6. due to the motor vehicle accident he suffered a brain injury which has resulted in brain seizures, which has prevented the Appellant from working, and which has substantially affected his quality of life.
7. as a result of the motor vehicle accident he could no longer walk long distances, he has difficulty walking any distance except with the a cane, he cannot sit for long periods of time, he is unable to play golf one or two times each week or play in tournaments, he cannot attend socials for long periods of time and dances as he once did and he no longer can swim, jog or fish.

8. he suffers from dizzy spells, now walks with a cane and has suffered a loss of memory which he never experienced prior to the motor vehicle accident.

The Appellant also testified that, subsequent to the receipt of [Appellant's neuropsychologist's] report he wrote to [Appellant's neurologist #2] on May 21, 1998 and confirmed that the first persons he spoke to at the scene of the accident were not the ambulance attendants but the firefighters and further testified that his wife confirmed his recollection in this respect.

[Appellant's wife] also testified that:

1. her husband had been very active physically prior to the motor vehicle accident and she corroborated her husband's testimony in this respect.

2. she was a passenger in the motor vehicle at the time of the accident and that as a result of the accident her husband was rendered unconscious, his eyes were closed, he was not responding to her calls, and that he had passed out.

3. when the ambulance attendants arrived they started moving him, he started moaning and his eyes were wide open at that time.

4. when the firefighters arrived they were able to remove him from the motor vehicle and place him in a stretcher and at the time he was still moaning and in pain and she did not recall if he was answering any questions.

[Appellant's neurologist #2] testified on behalf of the Appellant and stated that:

(a) in his view the motor vehicle accident was the cause of the brain injury to the Appellant, which resulted in the brain seizures.

(b) initially he was of the view that the motor vehicle accident was not the cause of the brain injury and the resulting brain seizures and that he had changed his opinion as a result of the two letters he received from the Appellant and his wife.

(c) he accepted their statements that there had been a lengthy period of unconsciousness and as a result concluded there had been significant brain injury to the Appellant which caused the brain seizures.

(d) if the Appellant was unconscious for a period of 10 minutes or less then he would not conclude that the Appellant's brain injury and resulting brain seizures were a result of the motor vehicle accident and would reconfirm his initial medical opinion as to the issue of causation.

[MPIC's doctor #2] testified on behalf of MPIC, agreed with [MPIC's doctor #1's] assessment, [Appellant's neuropsychologist's] assessment and his own previous opinion that there was no

evidence that the Appellant had suffered a brain injury as a result of the motor vehicle accident. [MPIC's doctor #2] further testified that if the Appellant had been rendered unconscious it would have been for a short period of time and that he would agree with [Appellant's neurologist #2's] initial medical opinion that there was no connection between the brain injury and the motor vehicle accident.

Submissions

Legal counsel for the Appellant submitted that:

(a) the only direct evidence as to the state of the Appellant after the motor vehicle accident was provided by [Appellant's wife], who was a passenger in the motor vehicle at the time of the accident.

(b) [Appellant's wife] was a credible witness and the Commission should accept her evidence that her husband was rendered unconscious as a result of the accident for a period of over 10 minutes and that the first person who spoke to the Appellant was not the ambulance attendant but the firefighters.

(c) the firefighters did not receive a call to attend the motor vehicle accident scene until approximately 18 minutes had elapsed from the time of the accident and during all of this time the Appellant was unconscious and continued to be unconscious until the firefighters arrived and removed the Appellant from the motor vehicle.

(d) [Appellant's neurologist #2] was correct in accepting the statements of the Appellant and [Appellant's wife] as to the length of time the Appellant was unconscious and, as a result, the Commission should accept [Appellant's neurologist #2's] medical opinion that the brain injury was a result of the motor vehicle accident and caused the Appellant to suffer from brain seizures, which rendered the Appellant unable to work.

(e) [Appellant's neurologist #2's] medical opinion was corroborated by [Appellant's doctor #1].

(f) on the balance of probabilities the Appellant had established that the motor vehicle had caused the brain injury which resulted in brain seizures and, as a result thereof the Appellant was permanently impaired and therefore was entitled to a permanent impairment award.

MPIC's legal counsel submitted that:

(a) the Appellant had not established on the balance of probabilities a connection between the motor vehicle accident and the Appellant's brain injury which were causing the brain seizures.

(b) the testimony of the ambulance attendant, [text deleted], and his report which was prepared on the date of the motor vehicle accident, clearly indicates he attended upon the Appellant approximately 9 to 10 minutes after the accident had occurred. The Appellant spoke to him and he concluded the Appellant had a Glasgow Coma Scale of 15, which indicated he was fully normal.

(c) [Ambulance Service paramedic's] testimony was in conflict with the testimony of both the Appellant and [Appellant's wife], who indicates that the first person the Appellant spoke to after the motor vehicle accident was a firefighter and not the ambulance attendant. Having regard to this conflict in the testimony between the Appellant, his wife and [Ambulance Service paramedic], and having regard to their faulty memories, MPIC's legal counsel submitted that the evidence of [Ambulance Service paramedic] should be preferred to the evidence of the Appellant and [Appellant's wife].

(d) both the Appellant and his wife, in letters to [Appellant's neurologist #2], misinformed [Appellant's neurologist #2] as to the period of time the Appellant was unconscious and this resulted in [Appellant's neurologist #2] changing his medical opinion on the causation issue.

(e) the Appellant acknowledged in testimony that his memory was poor and that he had difficulty remembering events.

(f) there were a number of inconsistencies in the Appellant's testimony and submitted that the Appellant's testimony in respect to the issue of causation should be rejected.

(g) the testimony of [Appellant's wife] was vague in respect of the events surrounding the motor vehicle accident and was inconsistent having regard to [Ambulance Service paramedic's] testimony and, therefore, her evidence should be rejected as well.

In respect of the medical evidence, MPIC's legal counsel submitted that:

(a) the initial medical opinion of [Appellant's neurologist #2], wherein he concluded that there was no connection between the motor vehicle accident and the brain injury, should be accepted and that medical opinion was confirmed by both [MPIC's doctor #1] and [MPIC's doctor #2].

(b) the latter opinion of [Appellant's neurologist #2], wherein he determined there was a causal connection between the motor vehicle accident and the brain injury, should be rejected because it was based on misinformation provided by the Appellant and [Appellant's wife].

(c) the Commission should accept the medical opinion of [Appellant's neuropsychologist] who concluded there was no evidence that the motor vehicle accident caused the Appellant's brain injury.

(d) in respect of [Appellant's doctor #1's] medical opinion, there was no objective medical evidence to support [Appellant's doctor #1's] view that there was a causal connection between the motor vehicle accident and the Appellant's brain injury.

MPIC's legal counsel therefore submitted that the appeal should be dismissed.

Discussion

The motor vehicle accident occurred on November 21, 1996 and the Commission hearings took place on December 19, 2002, May 2, 2003 and May 6, 2003. As a result of the motor vehicle accident, the Appellant alleges that he suffered a loss of consciousness, that the motor vehicle accident caused brain injury resulting in brain seizures and that his quality of life since the motor vehicle accident has been adversely affected. There is a period of approximately six years between the time of the accident and the time the Appellant testified before the Commission. The Appellant acknowledges that, having regard to his medical condition, his memory is poor and he cannot recall many of the events which occurred at the time of the accident.

[Appellant's wife], who was a passenger in the motor vehicle at the time of the accident, also testified about events which occurred approximately six years ago and also had difficulty recalling many of the events surrounding the motor vehicle accident. [Appellant's wife] candidly acknowledged that as a result of the accident she was in shock and this may have contributed to her lack of a clear and consistent recollection of the events of the motor vehicle accident.

The Commission notes that the effluxion of time between the date of the accident and the time the Appellant and [Appellant's wife] testified, has contributed to the poor recollection of the events surrounding the motor vehicle accident by both the Appellant and [Appellant's wife]. As a result, the Commission was required to consider the testimony of both the Appellant and [Appellant's wife] with a great deal of caution.

The Commission, upon review of the totality of the evidence of the Appellant and [Appellant's wife], finds that their testimony is inconsistent and in conflict with the evidence of the ambulance attendant and various medical practitioners.

The Commission also notes that there is a conflict in the medical evidence in support of and against the Appellant's position in this appeal. [Text deleted], the Appellant's medical physician, and [text deleted], the neurologist, (in his latter medical opinions) supports the Appellant's position that there is a causal connection between the motor vehicle accident and the brain injury. On the one hand the initial medical opinions of [Appellant's neurologist #2], and as well the medical opinions of [Appellant's neuropsychologist], [MPIC's doctor #1] and [MPIC's doctor #2] all conclude there is no causal connection between the motor vehicle accident, the brain injury and the brain seizures that the Appellant is suffering from.

In assessing credibility where there is conflict of evidence, the British Columbia Court of Appeal in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (B.C.C.A.) stated:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject to his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and

> informed person would readily recognize as reasonable in that place and in those conditions.

The central issue is whether or not the Appellant suffered a brain injury in the motor vehicle accident and if he did whether this brain injury caused the brain seizures in question. In consideration of this issue, the Commission was required to determine the Appellant's allegation that he was rendered unconscious as a result of the accident and also to consider the length of time of the alleged unconsciousness.

The Appellant's recollection of the events of the accident are inconsistent. The Appellant was seen by [text deleted], the emergency room physician, at 2:55 p.m. on November 21, 1996 and he informed [Appellant's ER doctor #1] that he did not remember the accident. However, approximately 3 ½ hours later at 6:30 p.m., the Appellant advised [Appellant's neurologist #1] that he did remember the collision. The next day the Appellant completed a Highway Traffic Act Report in which he fully described the events prior to, during the course of and after the accident.

The Appellant is also inconsistent in his recollections as to who he first spoke to at the scene of the accident. The Commission accepts the testimony of [text deleted], the ambulance attendant, who testified that he attended at the scene of the motor vehicle accident prior to the firefighters and that the Appellant spoke to him prior to speaking to the firefighters. [Text deleted] is a licensed practical nurse with over twenty years experience in the health care field, both in the Military Service and the [text deleted] Ambulance Service. [Ambulance Service paramedic] testified that after attending upon the Appellant he prepared a report on November 21, 1996 (the same date as the motor vehicle accident). The Commission finds that [Ambulance Service paramedic] was a credible witness whose testimony is based on a report that he prepared shortly

after the accident, his evidence was given in a clear and cogent fashion, without any inconsistencies either in examination-in-chief or cross-examination. The Commission finds that in respect to any conflict in the evidence between [Ambulance Service paramedic] on the one hand and the Appellant and [Appellant's wife] on the other hand, the Commission prefers the evidence of [Ambulance Service paramedic].

The Commission has determined, having regard to the information contained in [Ambulance Service paramedic's] report and in his testimony, that the motor vehicle accident occurred approximately 9 to 10 minutes prior to [Ambulance Service paramedic] attending upon the Appellant at the scene of the motor vehicle accident. When [Ambulance Service paramedic] arrived at the scene of the motor vehicle accident he noted that the Appellant had a Glasgow Coma Scale of 15, indicating he was fully alert and oriented.

The report of the firefighters who attended at the scene of the motor vehicle accident was filed in evidence and indicates that the fire department received a call to attend at the scene of the motor vehicle accident approximately 17 minutes after the motor vehicle accident occurred. There is no evidence as to the length of time it took the firefighters to arrive at the scene of the motor vehicle accident but the Commission is satisfied that there was a significant period of time between the time [text deleted], the ambulance attendant, arrived at the scene and attended upon the Appellant to the time the firefighters arrived at the scene. The Commission therefore finds that by the time the firefighters attended at the scene of the motor vehicle accident the Appellant had been conscious for some period of time and had initially spoken to the ambulance attendant and not the firefighters.

The Commission therefore rejects the evidence of the Appellant and [Appellant's wife] who in their letters to [Appellant's neurologist #2], dated May 18 and May 21, 1998, and in their testimony indicated that the Appellant was first awakened by the firefighters at the scene of the accident and not by the ambulance attendant and that the first persons the Appellant spoke to at the scene of the accident were the firefighters and not the ambulance attendants.

The Appellant is also inconsistent in respect of who advised him of his unconsciousness. [Appellant's doctor #1] reports that when he met with the Appellant on November 25, 1996 the Appellant informed [Appellant's doctor #1] that he was advised of his unconsciousness by the ambulance attendant. In the month of August 1997 he reported to his case manager that he was advised of his unconsciousness by the firefighters. In the month of May 1998 he informed [Appellant's neuropsychologist] that he was advised by his wife that he was unconscious.

The Appellant is also inconsistent in his recollection as to the length of time he was unconscious. The Appellant informed [Appellant's neurologist #1], who attended upon him at the hospital at approximately 6:00 p.m. on the date of the accident, that he was momentarily rendered unconscious. On November 25, 1996 the Appellant informed [Appellant's doctor #1] that he had lost consciousness for approximately 10 minutes and that he was so advised by the ambulance attendant who attended at the scene of the motor vehicle accident. On January 21, 1997 the Appellant, in a conversation with the case manager, informed him that he was unconscious for about 14 minutes following the motor vehicle accident.

[Appellant's neurologist #2], in his report dated May 26, 1997, indicates that when he saw the Appellant on February 26, 1997 the Appellant informed him that as a result of the accident he was concussed for a few minutes. In the MPIC's case manager's Memorandum dated August

12, 1997 the Appellant informed the case manager that he was awakened by firemen trying to get him out of the car and that he was unconscious for approximately 10 to 15 minutes.

[Appellant's neuropsychologist], in a note to the case manager dated May 20, 1998, indicates that the Appellant informed him that he lost consciousness for at least 10 minutes based on his wife's observations.

The delay by the Appellant in complaining about a head injury caused by the motor vehicle accident is inconsistent with his claim for a permanent impairment award. The Commission notes that the Appellant never complained immediately after the motor vehicle accident about a head injury to the ambulance attendant, [text deleted], the emergency room physician, or to [text deleted], the neurologist who saw the Appellant several hours after the motor vehicle accident had occurred.

[Appellant's doctor #1], who saw the Appellant four days after the motor vehicle accident and on several occasions during the month of December 1996, at no time reported that the Appellant complained about a head injury or that he had struck his head against the roof of the automobile. The Appellant had an accident on January 17, 1997, approximately two months after the motor vehicle accident, when he fell and hit his head against the floor. The first time the Appellant reported to MPIC that he was unconscious at the motor vehicle accident was on January 21, 1997 when he spoke to his case manager. The first time the Appellant advised his case manager he bumped his head on the roof liner of his car and was unconscious for a period of 10 or 15 minutes was on August 12, 1997, approximately 8 ½ months after the accident.

The Appellant's faulty memory is demonstrated in his communication with his case manager on two occasions. [Appellant's neurologist #2], who was advised by the Appellant on February 26, 1997 that he was concussed as a result of the accident for a few minutes, informed MPIC that it was possible the head injury was caused by the motor vehicle accident. [Appellant's neurologist #2] confirmed this opinion in a letter to MPIC dated September 24, 1997. [Appellant's neurologist #2] was provided with a copy of [Appellant's neuropsychologist's] medical reports and after reviewing them advised MPIC in a report dated April 22, 1998 that he was unable to sort out what had occurred at the accident. He further stated that if the Appellant had a concussion it would have been a mild one and he cannot be certain that the brain injury the Appellant was suffering from was caused directly by the motor vehicle accident but it was possible it did. Notwithstanding [Appellant's neurologist #2's] initial medical opinion that there was no connection between the Appellant's brain injury and the motor vehicle accident, the Appellant informed his case manager on May 29, 1997 and September 24, 1997 that [Appellant's neurologist #2] advised him that the brain damage and brain seizures were a direct result of the motor vehicle accident.

The Appellant's faulty memory is also demonstrated by his letter to [Appellant's neurologist #2] dated May 21, 1998. As a result of the case manager's discussion with the Appellant, [Appellant's neuropsychologist] is requested by MPIC to review all of the medical information and to advise MPIC as to [Appellant's neuropsychologist's] opinion as to the cause of the Appellant's complaints. [Appellant's neuropsychologist], in his reports to MPIC dated December 31, 1997 and February 9, 1998, concludes there is no clear evidence that the Appellant had indeed suffered a head injury. Upon receipt of these reports the Appellant and his wife both write to [Appellant's neurologist #2] respectively on May 21, 1998 and May 18, 1998. In his letter to [Appellant's neurologist #2] the Appellant asserts he was not awakened by the

ambulance attendant but by the firefighters. [Appellant's wife] in her letter to [Appellant's neurologist #2] indicates her husband was unconscious for over 10 minutes and that the first person who spoke to the Appellant was not the ambulance attendant but the firefighter.

The information provided by the Appellant and [Appellant's wife] to [Appellant's neurologist #2] is inconsistent with the evidence tendered by the ambulance attendant, [text deleted]. The Commission has earlier determined that in respect of any conflict of evidence between [Ambulance Service paramedic], the Appellant and [Appellant's wife] the Commission accepts the evidence of [Ambulance Service paramedic] and rejects the evidence of the Appellant and [Appellant's wife].

The information provided by the Appellant and [Appellant's wife] is significant because it asserts that the Appellant was not unconscious for a period of less than 10 minutes but for a substantially longer period of time and this resulted in [Appellant's neurologist #2] modifying his position on causation. [Appellant's neurologist #2's] change in position is reflected in his letter to MPIC dated June 1, 1998 wherein he asserts that there was a gap of 27 minutes which was unaccounted for at the time of the accident. [Appellant's neurologist #2] concluded that although the ambulance attendants were the first medical people to witness the Appellant, there was a half hour gap where the Appellant asserts he was unconscious. [Appellant's neurologist #2] therefore concluded, having regard to the length of unconsciousness, that there was a significant brain injury suffered by the Appellant as a result of the motor vehicle accident.

The Commission therefore concludes that the discussions the Appellant had with the case manager on the issue of causation and the letters of the Appellant and [Appellant's wife] to

[Appellant's neurologist #2] on the issue of causation clearly demonstrate a faulty recollection by both the Appellant and [Appellant's wife].

The Appellant's faulty recollection is also demonstrated in the Appellant's request for reimbursement of the cost of removal of a tree from his property. On June 9, 1997 the Appellant, in a telephone discussion with the case manager, advised the case manager that a tree had been removed from his property due to his wife's allergies and that he wished reimbursement from MPIC, which request was rejected by MPIC. The Appellant in his testimony at the appeal hearing informed the Commission that the tree in question was located in an area on his property where he parked his car. He further testified that it was extremely difficult for him, due to the injuries he sustained in the motor vehicle accident to leave his car after he had parked it on his property.

The Commission therefore concludes that, having regard to the Appellant's acknowledgment that his memory was faulty, the numerous inconsistencies in his testimony, the conflict between his testimony and the testimony of [Ambulance Service paramedic], and the incorrect information that he provided to both case managers and [Appellant's neurologist #2], the Commission cannot give any weight to the Appellant's testimony as to whether or not he suffered a brain injury as a result of the motor vehicle accident and, if he did, whether the brain injury caused a permanent impairment.

In respect of the testimony of [Appellant's wife], [Appellant's wife] acknowledged that she was in shock as a result of the motor vehicle accident and was attempting to recall events which had occurred six years prior to the motor vehicle accident. [Appellant's wife] had not been interviewed by MPIC after the motor vehicle accident and, therefore, had made no written

statement contemporaneously with the events surrounding the motor vehicle accident. Accordingly, [Appellant's wife] had no contemporaneous source available to her to refresh her memory as to the events in question prior to testifying before the Commission and was required to rely solely on her memory.

The Commission notes that both in examination-in-chief and in cross-examination [Appellant's wife] had difficulty in recalling many of the events surrounding the accident. In her testimony [Appellant's wife] confirmed her written statements in her letter to [Appellant's neurologist #2] dated May 18, 1998 that her husband was unconscious for over 10 minutes and the first person he spoke to was not the ambulance attendant but a firefighter.

The Commission finds this evidence in conflict with the evidence of the ambulance attendant, [text deleted], for the reasons indicated earlier. The Commission accepts the evidence of the ambulance attendant and rejects the evidence of [Appellant's wife] on this issue. The Commission finds that the Appellant was first spoken to by the ambulance attendant at approximately 9 or 10 minutes after the motor vehicle accident and that the Appellant was conscious, alert and oriented at that time.

Having regard to the faulty recollections of [Appellant's wife], her inconsistent and contradictory evidence, the Commission determines that it can give no weight to her evidence on the issue as to whether or not the Appellant suffered a brain injury at the time of the motor vehicle accident and, if he did, whether the brain injury caused a permanent impairment.

Medical Evidence

The Commission accepts the opinion of [Appellant's neuropsychologist] who concluded that in his view there was no objective evidence that the Appellant suffered a brain injury at the time of the accident and that there was no objective evidence that the Appellant suffered a loss of consciousness as a result of the motor vehicle accident. [Appellant's neuropsychologist's] medical opinion is confirmed by [MPIC's doctor #2], a member of MPIC's Health Services Team.

The Commission also notes that the initial reports of [Appellant's neurologist #2] accepting the Appellant's statements that he had a momentary loss of consciousness or that he was unconscious for a period of 10 minutes, concluded the injury the Appellant suffered to his brain was not likely caused by the motor vehicle accident. [Appellant's neurologist #2's] initial medical opinion was confirmed by the testimony of [MPIC's doctor #2] that there was no causal connection between the motor vehicle accident and the brain injury causing the brain seizures.

The Commission accepts the initial medical opinion of [Appellant's neurologist #2] on the issue of causation and rejects the subsequent medical opinion of [Appellant's neurologist #2] that there was a causal connection between the motor vehicle accident and the brain injury causing the brain seizures. [Appellant's neurologist #2] acknowledged in his testimony before the Commission that he modified his opinion on the issue of causation based on the information contained in the letters from the Appellant and [Appellant's wife]. The Commission has concluded that [Appellant's neurologist #2] was misinformed by the Appellant and [Appellant's wife] as to the events surrounding the motor vehicle accident and therefore in error when he modified his medical opinion on causation.

[Ambulance Service paramedic's] evidence that he observed the Appellant 9 or 10 minutes after the accident occurred and that the Appellant was awake, oriented and appeared normal is consistent with the testimony of [Appellant's ER doctor #1] and [Appellant's neurologist #1]. The Commission accepts the medical opinion of [text deleted], the emergency room physician who, shortly after the motor vehicle accident, noted that the Appellant was alert *"0x3"* and there was no cranial lesion, that the Appellant was fully oriented and had a Glasgow Coma Scale of 15. In addition, the Commission also accepts the medical opinion of [Appellant's neurologist #1], the neurologist, who examined the Appellant several hours after the motor vehicle accident on November 26th and concluded there was no evidence of significant neurological deficit at the time of his examination.

The Commission rejects the medical opinion of [Appellant's doctor #1] on the grounds that he has not provided any objective basis for concluding that there was a causal connection between the motor vehicle accident and the brain injury suffered by the Appellant.

[Appellant's neurologist #2] initially concluded there was no causal connection between the motor vehicle accident and the head injury, and [Appellant's doctor #1] appears to be of the same view in his reports to MPIC on April 24, 2000 and June 20, 2000. On April 24, 2000 [Appellant's doctor #1] states that the seizure disorder may be related to the head injury. In his letter to MPIC dated June 20, 2000 [Appellant's doctor #1] states that the seizure disorder seemed causally connected to the motor vehicle accident and certainly appeared to be temporally related to the motor vehicle accident. In both of these instances [Appellant's doctor #1] asserts it is possible, but not probable, that there is a causal connection between the seizure disorder and the head injury suffered from the motor vehicle accident. However on March 25, 2001 [Appellant's doctor #1] asserts that, in his opinion, the seizure disorder is related to the motor

vehicle accident and indicates that in his previous letters to MPIC he details his findings and opinions. [Appellant's doctor #1] did not provide any objective medical basis for his opinions.

The Commission finds that there is no objective medical evidence provided by [Appellant's neurologist #2] in his medical opinions to MPIC dated June 1, 1998 and August 9, 2001 and in [Appellant's doctor #1's] medical opinions to support the Appellant's position that there is a causal connection between the motor vehicle accident and the seizure disorder caused by the head injuries resulting from the motor vehicle accident. For these reasons the Commission rejects the medical opinions of [Appellant's doctor #1] and the latter opinion of [Appellant's neurologist #2] on the issue of causation.

The Commission therefore concludes that the Appellant has not established on the balance of probabilities that:

1. as a result of the motor vehicle accident the Appellant suffered a brain injury;
2. there is a causal connection between the motor vehicle accident and the seizure disorder related to a head injury caused by the motor vehicle accident.

The Commission therefore confirms the decision of the Internal Review Officer dated March 3, 2000 dismissing the Appellant's request for a Permanent Impairment Award in respect of a head injury.

2. Entitlement to reimbursement for seizure medication

The Commission has determined on the balance of probabilities that the seizure disorder suffered by the Appellant was not caused by the motor vehicle accident. Pursuant to Section 136(1)(a) of the Act and Section 38 of Manitoba Regulation 40/94, reimbursement is available only for

medication expenses resulting from a motor vehicle accident injury. Accordingly, the Commission dismisses the Appellant's request for reimbursement in respect of seizure medication.

3. Entitlement to Income Replacement Indemnity ("IRI") benefits

4. Entitlement to physiotherapy benefits

5. Entitlement to funding for left knee brace

The Appellant was involved in a motor vehicle accident on November 21, 1996 and applied for Income Replacement Indemnity ("IRI") benefits because he was unable to work due to the motor vehicle accident. The Appellant was to start delivering papers for [text deleted] November 22, 1996. The Appellant's Application for Compensation indicated he also started employment on November 18, 1996 with a company to act as Manager performing grass cutting and snow clearing operations at an apartment block.

MPIC paid IRI benefits to the Appellant until October 23, 2000 and these benefits were terminated pursuant to Section 110(1)(a) of the MPIC Act. Pursuant to Section 110(2)(d) of the Act, IRI continues for one full year unless employment is secured during that year. MPIC refused to provide funding for physiotherapy treatments or for the reimbursement of the cost of a knee brace.

The Appellant sought an Application for Review in respect of the termination of IRI benefits, for the refusal to fund physiotherapy treatments and the cost of the purchase of a knee brace. The Internal Review Officer issued a decision dated January 11, 2001 dismissing the Application for Review and confirming the decision of the case manager.

Appeal

The relevant provisions of the Act in respect of this portion of the appeal are as follows:

> **Events that end entitlement to I.R.I.**
> **110(1)** A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:
> (a) the victim is able to hold the employment that he or she held at the time of the accident;
>
> **Temporary continuation of I.R.I. after victim regains capacity**
> **110(2)** Notwithstanding clauses (1)(a) to (c), a full-time earner or a part-time earner who lost his or her employment because of the accident is entitled to continue to receive the income replacement indemnity from the day the victim regains the ability to hold the employment, for the following period of time:
> (d) one year, if entitlement to an income replacement indemnity lasted for more than two years.
>
> **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;
>
> **M.R. 40/94**
> **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, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

Legal counsel for the Appellant asserted that the Appellant was entitled to have his IRI reinstated as the Appellant was unable to return to his previous employment as a result of the injuries he sustained in the motor vehicle accident. In his testimony the Appellant asserted that because of the brain injury and the injuries he sustained to his neck, back and left knee he was unable to work and, as a result, was entitled to IRI benefits.

In response, MPIC's legal counsel asserted that the physical disabilities which prevented the Appellant from working were not as a result of injuries that the Appellant sustained in the motor vehicle accident. In addition, MPIC's legal counsel asserted that any injuries that the Appellant did sustain in the motor vehicle accident were injuries that the Appellant had recovered from and that the Appellant was capable of returning to work of a light and sedentary nature.

The Appellant also asserted that his pre-accident osteo-arthritic changes in his cervical and lumbar spine were exacerbated by the motor vehicle accident and, as a result, MPIC should be required to reimburse the Appellant in respect of physiotherapy treatments.

MPIC's legal counsel responded by asserting that there was insufficient medical evidence to indicate that pre-existing medical conditions were enhanced by the motor vehicle accident and that any aggravation of problems to the Appellant's neck and back had been healed over a period of time.

In respect of funding for a left knee brace, the Appellant's legal counsel asserted the Appellant was entitled to be reimbursed for the purchase of a knee brace as prescribed by [Appellant's doctor #1] and his physiotherapist.

In response, MPIC's legal counsel submitted the Appellant had a prior incident with respect to his knee (forklift accident) which resulted in a cartilage being removed from his left knee and, as a result thereof, the Appellant has had problems with his left knee from time to time. MPIC's legal counsel also asserted that there was no connection between the motor vehicle accident and the problems that the Appellant had in respect of his left knee.

Discussion

The Commission was required to determine whether or not there was a connection between the injuries the Appellant sustained in the motor vehicle accident and his claims for IRI benefits, entitlement to funding for physiotherapy treatments and for reimbursement of the cost of the purchase of a left knee brace.

[Text deleted], a physical medicine and rehabilitation specialist, provided a report to MPIC dated October 2, 2000. In this report [independent rehab specialist] outlined the prior history of the Appellant:

> There is a report of a prior history of a motor vehicle accident with a description of some on and off neck symptomatology since this. There is file evidence suggesting pre-existing cervical degenerative changes present as well as a history of previous treatment for the neck. There is as well reported on and off back symptoms since 1970. With radiologic evidence suggesting pre-existing degenerative changes in the lumbosacral spine. The CT scan on file suggests severe facet degenerative changes at the lumbosacral junction. There is a pre-existing history of a left knee forklift injury in 1979, followed by cartilage removal, likely a medial meniscotomy. There is report of on and off problems with the left knee since. There is a past history of cardiac arrhythmia and a past episode in 1952 and more recent in 1998 followed by surgery in 1999. This appeared to be a supraventricular tachycardia and atrial fibrillation. There as well appears to be other cardiac abnormalities specifically left ventricular dilation that identified on a cardiac-ultrasound. He has a medical history of hypertension. He reported a more recent history of seizures.

The Internal Review Officer in her decision dated January 11, 2001 succinctly summarizes the medical evidence in respect of the Appellant's claim in respect of IRI benefits:

> ***DISCUSSION***
>
> The initial healthcare information with respect to your left knee does not document joint swelling, ligamentous laxity or joint movement. There is documentation with respect to left leg weakness which in the initial reports is said to be related to the lower back area.
>
> [Text deleted], physiotherapist, by way of a report dated April 17th, 2000 documented that your left knee evidenced first degree laxity of the anterior cruciate and lateral collateral ligaments. [Appellant's physiotherapist] recommended the utilization of a left

knee brace when walking or doing strengthening exercises. She also recommended a integrated physiotherapy program to address the muscle weakness in the legs as well as other regions of the body. It should be noted that in both the cervical and lumbosacral areas, there is an identified osteoarthritic and degenerative disc process which pre-existed the motor vehicle accident. [Appellant's physiotherapist] at no time commented on the issue of causation and whether her recommendations were related to your 1996 accident.

[Text deleted], your family practitioner, by way of a letter dated April 24th, 2000 outlined pre-accident osteoarthritic changes in the cervical and lumbar spines which in his view may have been aggravated by the November 21st, 1996 motor vehicle accident. [Appellant's doctor #1] also stipulated that you remained unable to return to your former occupation. It is not unreasonable to conclude that your spinal osteoarthritis could have been exacerbated by the 1996 motor vehicle collision.

This medical information was reviewed by [text deleted], a medical consultant with the Healthcare Services Unit of The Manitoba Public Insurance Corporation. [MPIC's doctor #2] opined in a memorandum dated May 16th, 2000 that the natural history of any exacerbation would have been over by the time of his review of the medical information. In [MPIC's doctor #2's] view, there was insufficient medical evidence to indicate that the pre-existing medical conditions were enhanced by the motor vehicle collision in question. He went on to state as follows:

> The natural history of musculotendinous strain is for healing to occur over time and a resolution of normal function unless there is evidence of structural alteration to muscle and/or tendon. The information reviewed does not identify [the Appellant] as developing a musculotendinous injury that resulted in a permanent alteration of the affected structure. As to how [the Appellant's] musculotendinous strain arising from the motor vehicle collision and/or the exacerbation of his pre-existing osteoarthritis involving the spine factor into his present symptomatology could not be determined. It is probable that any contribution would be minimal at this time considering the accident occurred approximately three and one-half years ago. Other factors have become apparent and other injuries have occurred subsequent to the collision which in turn might adversely affect [the Appellant's] cervical and lumbosacral spine as well as the musculotendinous structures supporting these regions.

[MPIC's doctor #2's] opinion was based upon the natural history of the conditions arising from the collision and those conditions would no longer have played a significant role. [MPIC's doctor #2] also stipulated that the file did not identify a medical condition arising from the collision which would prevent you from returning to your pre-collision occupational duties as a courier/messenger based upon the job demands of that position.

[Appellant's rehab specialist] submitted a report dated May 8th, 2000. [Appellant's rehab specialist] diagnosed chronic regional myofascial neck pain syndrome with hypersensitized L5-S1 segments. [Appellant's rehab specialist] disclosed that he first saw you almost three years after the accident and historically you advised that the symptoms had been persistent since the motor vehicle accident. Therefore, on a balance of probabilities [Appellant's rehab specialist] found that it was most likely that your

chronic complaints were as a result of the motor vehicle collision. He also reported that you had a mild to moderate degree of functional deficit and as a consequence trigger point injection therapy was initiated albeit you did not return for follow-up appointments in November and December, 1999.

There is no indication that [Appellant's rehab specialist] had the opportunity of reviewing any other medical documentation prior to the rendering of his opinion. There are clearly other pieces of medical information which were not afforded to [Appellant's rehab specialist] as is evident from his section on page 2 commenting on past medical history. That section is extremely general and makes no mention of the pre-existing degenerative changes in the cervical and lumbar spines as well as the pre-accident condition and surgery involving the left knee area.

[Appellant's doctor #1] continued to remain supportive of a relationship between the left knee complaints and the motor vehicle accident in his report dated June 20th, 2000. As well, all other continuing complaints appeared in his view to be related albeit some were superimposed on previous problems as had been set forth in his letter of April 24th, 2000.

In an effort to resolve the causation issue, the matter was referred to [text deleted], a physical medicine and rehabilitation specialist, who authored a report dated August 14th, 2000. [Independent rehab specialist] has provided a thorough and detailed analysis of the medical information on file, pre-accident history as well as his comments of the physical examination. [Independent rehab specialist] stipulated that the physical examination was difficult to interpret because of pain behaviour during your examination. In his view, there did not appear to be any definite myofascial pain activity. It was his expectation that there would be some degree of progression in the degenerative changes simply related to aging in view of the number of years post motor vehicle accident and your age. [Independent rehab specialist] addressed causation as follows (page 6):

> Based upon the available information, to a reasonable degree of medical certainty, there does not appear to be a definite causal relationship between the examinee's current complaints and the reported injury of November 21, 1996. The MVA of 1996 is now 4 years post. There are significant pre-existing and other conditions present which appear to be contributing to the current symptomatology and the reported 80% deterioration since onset to the current date. There is a report and a history of a temporal relationship to symptoms with aggravation likely as a result of the motor vehicle accident of 1996. We would have expected that any acute injuries that resulted from the accident have resolved. There is no evidence of any acute or chronic inflammation of chronic inflammation or bony soft tissues to count for the ongoing reported disability. [*sic*.]

[Independent rehab specialist] commented that the impairments which persist would be unrelated to the motor vehicle accident. Further, he was of the opinion that your present condition would not facilitate a capability of resuming pre-accident occupations. You were described as being capable of sedentary to light work capacity albeit that inability to work at prior activities, which you had just commenced and were about to commence,

was not on a balance of probabilities related to the 1996 motor vehicle collision. [Independent rehab specialist] stated (page 10) that:

> It is my opinion that any aggravations from the initial injuries likely have resolved and would not be primary factors affecting return to the prior occupation as a newspaper carrier and snow clearer.
>
> It is my opinion that he appears to be able to do light work or of a sedentary light nature at least on a part time capacity, in spite of his apparent musculoskeletal problems and associated conditions present.

It should be noted that [MPIC's doctor #2] in his memorandums on file concurred that there was no medical condition arising from the motor vehicle accident which would account for your continuing symptomatology.

Decision

The Commission notes that [Appellant's rehab specialist] did not have all of the medical reports in respect to the Appellant relating to his medical condition before and after the motor vehicle accident. The Commission accepts the comments of the Internal Review Officer who determined that:

(a) [Appellant's rehab specialist] did not have the opportunity of reviewing any other medical documentation prior to rendering his opinion.

(b) there were clearly other pieces of medical information in respect of the Appellant's past medical history which [Appellant's rehab specialist] did not have an opportunity of assessing.

(c) [Appellant's rehab specialist] did not comment on the pre-existing degenerative changes in the cervical lumbar spine as well as the pre-accident condition and the surgery involved in the Appellant's left knee area. Accordingly, the Commission cannot place a great deal of weight on the opinion of [Appellant's rehab specialist].

[Appellant's doctor #1], who like [Appellant's rehab specialist], found a connection between the Appellant's complaints and the motor vehicle accident, does not provide any objective medical evidence to support his opinion and therefore the Commission can give little weight to [Appellant's doctor #1's] opinion on causation.

The Commission, however, is satisfied that [independent rehab specialist], who was provided by MPIC with all of the relevant medical reports, has considered the medical history of the Appellant prior to and after the motor vehicle accident and concluded that the Appellant's ongoing complaints could not be connected to the motor vehicle accident. For these reasons the Commission gives greater weight to the opinion of [independent rehab specialist] than to the opinion of [Appellant's doctor #1].

[Independent rehab specialist] also corroborates the medical opinion of [MPIC's doctor #2] and concludes that the aggravations from the initial injuries the Appellant suffered in the motor vehicle accident were likely being resolved and would not be primary factors prohibiting the Appellant from returning to his work as a newspaper carrier and snow clearer.

For the reasons outlined above, the Commission accepts the opinions of [independent rehab specialist] and [MPIC's doctor #2] and does not accept the opinions of [Appellant's rehab specialist] and [Appellant's doctor #1]. As a result the Commission concludes that the Appellant has not established on the balance of probabilities a causal connection between the Appellant's current medical complaints and any injury he suffered as a result of the motor vehicle accident on November 21, 1996. The Commission is satisfied that any aggravations from initial injuries caused by the motor vehicle accident would have resolved themselves and could not be primary factors prohibiting the Appellant from returning to his previous occupation as a newspaper carrier and snow clearer. The Commission therefore finds that MPIC had ample evidence and acted reasonably when it terminated the IRI benefits of the Appellant and denied him entitlement for funding of a knee brace or physiotherapy benefits respecting his left knee.

The Commission therefore confirms the decision of the Internal Review Officer dated January 11, 2001 in respect of this matter dismissing the Appellant's request for entitlement to IRI benefits, entitlement to physiotherapy benefits and entitlement to funding for left knee brace.

6. Entitlement to reimbursement for Tachycardia drugs

The Appellant's request for reimbursement for Tachycardia drugs was refused by MPIC. The relevant sections of the MPIC Act and Regulations are as follows:

> **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;
>
> **M.R. 40/94**
> **Medication, dressings and other medical supplies**
> **38** The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

The Appellant was treated by [text deleted], a cardiologist at the [hospital #3] in respect of cardiac rhythm disturbances. [Appellant's cardiologist #1] in a medical report dated February 3, 1999 to MPIC indicated that the Appellant ". . .*has SVT which is likely due to a minor anomaly in his cardiac electrical system that he was born with and more recently he has atrial fibrillation which is likely liked (sic) to the initial dysrhythmia. He is currently receiving Flecainide for this condition. I do not see any link with this condition and any medications that [Appellant's doctor #1] may have prescribed."*

MPIC also received a report from [text deleted], who is a cardiologist at [text deleted]. In this letter [Appellant's cardiologist #2] indicates that ". . . *the purpose of prescribing Tambocor was for prevention and control of paroxysmal supraventricular tachycardia. I am not in a position to say whether this condition is a direct result of his motor vehicle accident in 1996. I can offer the comment that none of the many cases of paroxysmal PSVT that I have seen have been the result of physical trauma."*

The Internal Review Officer concluded that the decision not to pay for the medication is supported by the medical reports of [Appellant's cardiologist #1], dated February 3, 1999 and [Appellant's cardiologist #2], dated December 15, 1998. The Internal Review Officer further stated *". . . There is a high probability that your cardiac rhythm disturbances are due to a congenital anomaly in your cardiac electrical system. The atrial fibrillation you developed recently is linked to the cardiac rhythm disturbance."* As a result, the Internal Review Officer found there was no connection between the car accident and the Appellant's cardiac condition. The Internal Review Officer also notes that [Appellant's cardiologist #1] specifically ruled out a connection between the Appellant's cardiac conditions and medications [Appellant's doctor #1] prescribed to treat the Appellant's automobile accident injuries.

At the appeal hearing legal counsel for the Appellant asserted that MPIC was required to reimburse the Appellant for the cost of the Tachycardia drugs that the Appellant was required to purchase. The Appellant asserted that:

1. the medical experts cannot say with certainty that he was born with heart trouble.
2. he acknowledged that he had heart trouble in the past but as the result of an operation heart problems had subsided well before the motor vehicle accident happened.

3. his heart problems increased as a result of the motor vehicle accident and therefore he was entitled to reimbursement of this medication.

MPIC's legal counsel asserted, having regard to the medical evidence, the Appellant has not established on the balance of probabilities that there was a connection between the motor vehicle accident and the Appellant's cardiac problems.

The Commission, upon consideration of the evidence and the submission of the parties, determines that the Appellant has not established on the balance of probabilities his entitlement to reimbursement of the cost of tachycardia drugs pursuant to Section 136(1)(a) of the Act and Section 38 of Manitoba Regulation 40/94. The Commission therefore determines that the Internal Review Officer was correct in rejecting the Appellant's claim for payment in respect of these drugs and dismisses his appeal in respect of this matter.

7. Entitlement to reimbursement for cost of mattress

The Appellant's request for reimbursement for the cost of a mattress was rejected by MPIC. As a result the Appellant made an Application for Review of this decision. In a decision dated April 9, 1999 the Internal Review Officer rejected the Appellant's request for reimbursement on the following grounds:

> [Text deleted] letter of December 22, 1998 rejected your claim for reimbursement for the cost of a firm mattress. Section 136(1) of the Act applies here just as it does to prescription medication. Reimbursement for replacement beds is available only where such a bed is needed "because of the accident". Section 10(1)(d)(iii) of Regulation 40/94 adds the additional condition that the bed must be "medically required" before reimbursement is available. Both of these provisions apply to mattresses as well as to complete beds.
>
> The only support for your claim for this benefit is the very short note from [Appellant's doctor #1] dated September 18, 1998 which reads, in its entirety: "Low back pain with L. leg pain and paresthesias (l4-L5 disc degeneration). Requires firm mattress." This may

> be sufficient to show that the mattress is medically required. There is nothing here, however, showing that it is medically required "because of the accident". Indeed, the evidence is very much to the opposite effect.
>
> [Appellant's doctor #1's] report of February 23, 1998 acknowledges that you have a history of pre-existing lower back pain associated with osteoarthritis of the spine and L5 disc degeneration. [Appellant's doctor #2's] report of January 2, 1996 (which predates your car accident) talks in terms of L4-5 disc degeneration "with progression in severity since June 6, 1991." These are exactly the complaints you had following your automobile accident. The CT scan report from [Appellant's doctor #3] dated November 6, 1997 refers to a "previous exam. from Sept. 1993." It would appear that you had three separate CT scans of your lower back before you were ever involved in the motor vehicle accident you say entitles you to benefits.

In rejecting the Appellant's claim for reimbursement of the cost of a mattress, the Internal Review Officer stated:

> We have no quarrel with [Appellant's doctor #1's] suggestion that your lower back problems were exacerbated by your motor vehicle accident. Nevertheless, this accident occurred more than two years ago. That aggravation should have resolved long since. The disc degeneration [Appellant's doctor #1] says necessitates a firmer mattress existed long before your motor vehicle accident. It is outside the coverage provided by PIPP and so I am confirming the decision of December 22, 1998.

The Commission determines that the Internal Review Officer was correct in finding that:

(a) the lower back problems the Appellant had pre-existed the motor vehicle accident and [Appellant's doctor #1's] suggestion that the Appellant's lower back problems were exacerbated by the accident would have resolved itself in the two year period prior to the Appellant's request for reimbursement of the cost of the mattress.

(b) the motor vehicle accident occurred more than two years prior to the Appellant's request for reimbursement of the cost of a mattress and any aggravation to the Appellant's lower back as a result of the accident would have long resolved itself.

The Commission therefore determines the Appellant has failed to establish on the balance of probabilities because of the accident he was required to have a firm mattress pursuant to Section 136(1) of the Act or that the cost of the mattress was medically required pursuant to Section 10(1)(d) (iii) of Regulation 40/94. The Commission therefore confirms the decision of the Internal Review Officer that MPIC was justified in rejecting the Appellant's claim for

reimbursement of the cost of the mattress and dismisses the Appellant's appeal in respect of this matter.

8. Entitlement to reimbursement for cost of tree removal

In a Note to File the Case Manager reports a telephone discussion with the Appellant on June 9, 1997 wherein the Appellant advised him that he removed a tree from his property due to his wife's allergies. The Appellant further advised the case manager if not for the motor vehicle accident he would have done it himself. Subsequently, the Appellant wrote to MPIC, in an undated letter, indicating that he had not had a reply to his request for payment of $228.00 for the tree removal.

The case manager in a letter to the Appellant dated February 4, 2000 rejected the request for the payment for reimbursement of the tree removal on the following grounds:

> With respect to the aspect of the tree removal, please be advised that this is not a claimable expense under the Personal Injury Protection Plan (PIPP). Exterior home maintenance, unless it is required for safe entry or egress from the residence, or is a legal requirement for the maintenance of the premises, is not a claimable expense.

The decision of the case manager was confirmed by the Internal Review Officer in his decision dated March 3, 2000 and, as a result, the Internal Review Officer rejected the Appellant's claim for reimbursement of the cost of the tree removal.

The Appellant testified at the appeal hearing and indicated that the tree in question was located in an area on his property where he parked a car and it was extremely difficult for him, due to the injuries he sustained in the motor vehicle accident, to exit his motor vehicle after he parked it on his property due to the location of the tree. Accordingly, the Appellant had the tree removed and sought reimbursement from MPIC.

The Commission notes that the Appellant has contradicted himself in respect of the reason he had the tree removed from his property. In June of 1997 he verbally advised the case manager that the tree was removed due to his wife's allergies. In the Appellant's testimony before the appeal hearing he indicated that the reason for removal of the tree related to his difficulties in exiting his motor vehicle due to the injuries sustained in the motor vehicle accident. In view of the conflicting reasons that the Appellant provided in respect to the removal of the tree, the Commission finds that the Appellant has not established on the balance of probabilities that the removal of the tree was essential for the safe entry or egress from his residence, was not a legal requirement for the maintenance of his property and, therefore, is not a claimable expense under the Act. The Commission therefore confirms the decision of the Internal Review Officer dated March 3, 2000 and rejects the Appellant's appeal in this respect.

Dated at Winnipeg this 18 day of July, 2003.

MEL MYERS, Q.C.

BARBARA MILLER

WILSON MACLENNAN