Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-03-27

PANEL:	**Ms. Yvonne Tavares, Chairperson** **Dr. Patrick Doyle** **Mr. Paul Johnston**
APPEARANCES:	**The Appellant, [text deleted], was represented by [Appellant's representative];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.**
HEARING DATES:	**March 19, 24 & 25, 2004**
ISSUE(S):	**1. Entitlement to Income Replacement Indemnity Benefits beyond June 7, 2002;** **2. Entitlement to reimbursement for medication expenses;** **3. Entitlement to reimbursement of chiropractic treatments.**
RELEVANT SECTIONS:	**Section 83, ss. 136(1)(a) and (d) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act'); Section 8 of Manitoba Regulation 37/94 and ss. 5(a) and s. 38 of Manitoba Regulation 40/94.**

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

Reasons For Decision

The Appellant, [text deleted], was involved in a rear-end motor vehicle collision in [text deleted], on August 6, 2000. As a result of the injuries which she sustained in that motor vehicle accident, the Appellant became entitled to Personal Injury Protection Plan benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing the Internal Review decision dated January 7, 2003 with respect to the following issues:

1. Entitlement to Income Replacement Indemnity Benefits beyond June 7, 2002;
2. Entitlement to reimbursement for medication expenses; and
3. Entitlement to reimbursement of chiropractic treatments.

1. Entitlement to Income Replacement Indemnity benefits beyond June 7, 2002

The motor vehicle accident on August 6, 2000 occurred while the Appellant was stopped, waiting to make a left turn, when the car she was driving was struck with quite significant force from behind by another vehicle. On impact, her head was rapidly jerked forward, then backwards, forcefully striking the headrest. Her seat broke and became detached from its insertion. The Appellant did not lose consciousness at the scene of the accident, and was eventually able to exit the vehicle. She was conveyed by ambulance to hospital, where she underwent investigations for trauma to the head and the neck. CT scan and X-rays were found to be normal and she was discharged on her second day of hospitalization. She returned home to Manitoba 3 or 4 days later.

Following her accident, the Appellant's low back and right hip were painful. She also complained of severe headaches. However, her main complaint was of pain in her right shoulder and the left side of the neck. The pain also affected her arms, which she testified felt like lead and were difficult to use. She attended upon her family physician, [text deleted] on August 16, 2000. Examination at that time revealed primarily soft tissue injuries and she was given a prescription for anti-inflammatories and referred for physiotherapy treatment.

At the time of the motor vehicle accident, the Appellant was employed as a customer service agent for a call centre in [text deleted]. She had been employed at that occupation since January 2000. Just prior to her motor vehicle accident, on August 2, 2000, the Appellant had taken a medical leave of absence from her job at the call centre, due to the stress of her job and family responsibilities. The Appellant had suffered a major depression during the summer of 1998,

which had necessitated hospitalization. In order to avoid the return of a depressive illness, the Appellant had been advised by her psychiatrist to take time off from work, when she felt her stress levels rising and pressures becoming overwhelming. In accordance with her psychiatrist's advice, the Appellant had obtained a medical note from her family physician (since her psychiatrist, [text deleted] was on vacation at the time) authorizing the leave of absence from work.

Due to the Appellant's ongoing complaints of pain, decreased sitting tolerance and decreased cervical/thoracic range of motion, she was unable to return to work after the motor vehicle accident. As a result of the Appellant's inability to return to work after the motor vehicle accident, she became entitled to income replacement indemnity ('IRI') benefits in accordance with ss. 83(1)(a) of the MPIC Act. Subsection 83(1)(a) of the MPIC Act provides as follows:

> **Entitlement to I.R.I. for first 180 days**
> **83(1)** A temporary earner or part-time earner is entitled to an income replacement indemnity for any time, during the first 180 days after an accident, that the following occurs as a result of the accident:
>
> (a) he or she is unable to continue the employment or to hold an employment that he or she would have held during that period if the accident had not occurred.

Subsequently, MPIC's case manager determined that the Appellant was not entitled to IRI benefits for the period August 14 – 31, since she would not have been at work due to the medical leave of absence authorized by [Appellant's doctor].

The Appellant's status continued to be monitored throughout her claim by her case manager and several reports were obtained from her caregivers. [Appellant's psychiatrist], in his report dated November 23, 2000, commented that:

> [The Appellant's} first appointment, with myself, following her motor vehicle accident was in August, specifically the 22nd, 2000. Prior to her accident, her depressive illness was in remission. However, following her accident, which again put her life in disarray, she had become quite dysphoric and anxious, resulting in my re-initiating antidepressant medication. Specifically, she was started on Venlafaxine, the extended release preparation, 75 mg. daily. Prior to her accident, she had been functioning quite well but following the accident, she became extremely dysfunctional. She was very anxious and dysphoric, her sleep was impaired, she was unable to concentrate, she was worrying extensively and her interpersonal relationships were being negatively impacted upon.
>
> My most recent assessment of [the Appellant] took place on October 10, 2000 at which time I noted that she was improving both physically and emotionally but still had a long way to go. She was taking her medication as prescribed and doing her best to rehabilitate herself. Presently, she is not yet capable of returning to work and I would foresee the passage of 2 or 3 more months before she can begin a graduated return to work program. I do not believe that her disabilities or impairment are permanent. She continues on the medication I began, following her accident, Venlafaxine XR 75 mg. daily. She is certainly progressing in her care and with the benefit of medication and supportive psychotherapy, I expect full remission. My treatment plan is unchanged, at this time, as her progress is steady and substantial.

In a subsequent report, dated January 29, 2001, [Appellant's psychiatrist] opined that:

> 3. It is my observation that [the Appellant] continues to suffer from her physical symptoms and on the basis of my observation alone, I question whether she can return to work because of her level of discomfort. Further to that, on a psychiatric basis, because of her failing energy, poor concentration, continued dysphoria, I would suggest that this, over and above her physical presentation, mitigates against her return to work.

In a report dated April 17, 2001, [Appellant's psychiatrist] reported that:

> You inquire as to whether or not the motor vehicle accident, had it not occurred, would [the Appellant] have regained her functional capacity. In my opinion, that certainly would have been the case and, in fact, was exactly what had been happening. Of course, you are aware that her family physician had authorized a time off work, for medical reasons, shortly before her accident. As I stated in my phone conversation, with you, this was entirely compatible with our treatment plan. I had advised [the Appellant] that, for the sake of her continued mental health, that at times of extreme stress, that she take a time off, in order to avoid the return of a depressive illness. This was exactly what had happened and, should the accident not have shortly thereafter followed, she would have returned to work, in just a few days. I believe that the accident was responsible for the down turn in her mental status and the delay in her eventual recovery.

> Presently, [the Appellant] has not sufficiently recovered to allow a return to work. I believe that her recovery is imminent as demonstrated by her gradual improvement. I think that when she does return to work, it should be on a gradual basis, to ensure the utmost in success. It would be my opinion that her return will likely follow in the middle of the summer.

By the beginning of June 2001, the Appellant had improved to a degree that she attempted a gradual return to work. Instead of returning to her previous employment at the call centre, the Appellant determined that she preferred to return to long-distance truck driving (which occupation she had previously held). She arranged with a trucking company to take on driving runs of three days in length from [text deleted] to [text deleted], commencing on June 3, 2001. By letter dated June 5, 2001, MPIC advised the Appellant that her entitlement to IRI benefits would cease as of June 3, 2001, due to her ability to hold more remunerative employment (long-distance truck driving being more remunerative than the employment she held at the time of the accident as a customer service agent at the call centre).

Unfortunately, the return to long-haul truck driving was not successful for the Appellant. She took the week of June 20, 2001 off from truck driving, in order to rest. As of August 3, 2001 she ceased the long-haul truck driving altogether, as she found she was just not able to manage the work due to the ongoing affects of her injuries, specifically aches in her arms and back. [Text deleted], a chiropractor that [the Appellant] had been seeing for treatment since January 2001, noted the following in his report of August 31, 2001, with respect to the Appellant's failed return to work:

> [The Appellant] attended this office June 15th with some minor low back discomfort, but generally feeling quite well. She returned to this office on June 22 feeling exhausted and suffering from a sore back, neck and shoulders. It was at that time that I advised her that a week off work would be appropriate. She then attended this office on the 28th feeling somewhat better. She then did not attend this office until July 23 at which time she again looked tired and advised she was feeling a little tough. She was again seen on July 30th with not much improvement and then August 3 at which time she had regressed to a level where she was no longer capable of completing her duties safely as a truck driver. She was suffering with headache, neck pain, and shoulder pain. At the time I advised her

about nutritional supplements and advised her that she again should take another week off work.

On August 16 an examination was performed on [the Appellant] at which time she was found to have the following findings. Decreased cervical motion in extension and right rotation, decreased strength and increased sensation of the right arm and hand and overall stiffness. She appeared to be exhausted. No positive orthopedic tests were found.

As per our discussion it was my understanding that [the Appellant] was to return to work as she felt capable. It is my opinion that [the Appellant] has attempted to jump back to work at full pace without regard for her recovery and has consequently taken a downward turn. On last contact August 20/01, [the Appellant] has shown signs of improvement with rest.

On the advice of her family physician, the Appellant commenced treatment with an athletic therapist, [text deleted], on August 17, 2001. In his report dated October 16, 2001, [Appellant's athletic therapist] reported the following with regards to the Appellant's functional capacity:

ANALYSIS OF FINDINGS

My impression of [the Appellant's] Condition was that of mechanical lumbar and cervical pain with associated spinal and muscular restrictions. Significant abnormal illness behaviour was exhibited.

FUNCTIONAL LIMITATIONS

The following table outlines the current level of function as reported by [the Appellant]. Functional limitations observed in during treatment sessions are consistent with reported values.

Activity	Tolerance to Activity
Walking	2 blocks – moderate pace
Standing	5 minutes
Sitting (with lumbar support)	60 minutes
Sitting (no lumbar support)	< 1 minute
Driving (Automobile)	10-15 minutes
Light housework	10-15 minutes

TREATMENT PROGRAM/PROGRESS

To date, treatment has consisted of: pain control strategies, massage, myofascial release techniques, and dynamic core stabilization. A home exercise program has been developed to include: self administered pain control strategies, and

> progressive core stabilization exercises. Considerable time has been spent educating [the Appellant] on abnormal illness behavior and providing strategies to correct these behaviors. [the Appellant] reports decreased levels of pain in the cervical region and slight increases in tolerance to activity. Her hand pain is *(no)* longer present. Low back pain is now intermittent and full range of motion with the exception of extension and right side flexion.
>
> . . . .
>
> ***CURRENT OCCUPATIONAL LIMITATIONS***
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> At this time I believe [the Appellant's] physical capabilities do not meet the physical demands of her job as a truck driver in the following areas:
>
> - push/pull strength
> - sitting tolerance
> - stair/ladder climbing tolerance
>
> ***RETURN TO WORK RECOMMENDATIONS***
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> I feel that [the Appellant] will be able to begin a graduated return to work plan in approximately 3 weeks. I recommend she begin with being a passenger on short hauls (< 1 day) with 1 day rest between trips. Her duties would increase over time in an supernumerary position until she could demonstrate the ability to meet all her job demands.

In December 2001, the Appellant returned to truck driving on a gradual return to work basis with [Appellant's athletic therapist's] support. Initially she started at two hours per week, driving for 15 minutes and riding as a passenger for the remainder of the time. This was gradually increased to three times per week at four hours per day commencing in February 2002. However, at the end of February 2002, the program was discontinued due to insurance concerns. The Appellant testified that although her pain continued throughout this return to work, she was able to manage with the shorter shifts and modified duties.

In a decision dated March 13, 2002, MPIC's case manager advised the Appellant that she in fact had not been entitled to IRI benefits since July 8, 2001, when [Appellant's chiropractor #1] had confirmed that the Appellant would have been able to work at full duties as a customer service

agent. The case manager extended the Appellant's IRI benefits to March 26, 2002, in order to provide her with two weeks notice of the termination. However, the case manager also advised that she would write to the Appellant's caregivers in order to request further medical information supporting the Appellant's continued inability to return to the employment that she held at the time of the motor vehicle accident, as a customer service agent.

The Appellant sought an internal review of the case manager's decision of March 13, 2002. The Internal Review decision dated May 15, 2002 reinstated the Appellant's IRI benefits as of March 26, 2002 on the basis that her IRI benefits had been improperly terminated, since the case manager had incorrectly applied Section 110(1) of the MPIC Act.

On April 2, 2002, at the request of MPIC, the Appellant underwent an independent medical examination with [independent doctor]. In his report dated April 3, 2002 [independent doctor] noted the following with regards to the Appellant's condition:

> 4. She has no functional deficits to her musculoskeletal system.
>
> 5. She has no impairment of physical function related to this motor vehicle accident. The soft tissue injuries which she sustained from this accident do not preclude her from returning to the work that she held at the time of this accident, namely, being a customer service agent for [text deleted] in [text deleted].
>
> 6. Treatment plan:
> In my opinion, she requires no ongoing medications or manipulations or therapies or massages pertaining to this accident.
>
> 7. She has no identifiable measurable impairment of function that would prevent her from performing her full occupational duties at [text deleted].
>
> 8. She has long since recovered from the impairment of function that she had immediately following this accident. Soft tissue injuries heal at approximately six to eight to twelve weeks' time. In my opinion, she would have been able to resume her pre-accident duties and/or a graduated return to work program at approximately three months post-accident.

In a decision dated May 27, 2002, MPIC's case manager advised the Appellant that:

> A review of all medical information has taken place by our Health Services Team. Based on this review, the medical evidence indicates that you have recovered from the medical conditions arising from your motor vehicle accident to the extent that you are able to return to the employment held at the time of the accident, that of Customer Service Agent at [text deleted].
>
> As discussed, based on the above information, you are no longer entitled to Income Replacement as of the day of our conversation, May 24, 2002, as noted in Section 110(1)(a). In order to provide you with a further notice of an end date of entitlement, Income Replacement will end as of June 7, 2002. You indicated that you disagreed with this decision and wanted an application for Internal Review. An application for Internal Review was mailed out on May 24, 2002.

The Appellant did seek an Internal Review of that decision by her Application for Review of Injury Claim Decision dated June 25, 2002. At about the same time, the Appellant was referred by her family physician for psychological counselling. She attended [text deleted], clinical psychologist, for psychological evaluation on June 25, 2002 and July 30, 2002. In his report dated August 8, 2002, [Appellant's psychologist] advised as follows:

> Compared to that presentation, at the present time she appeared disspirited, with lower energy. In her personality she appears more dependent, and is somatizing much moreso. The dependency is such that she receives secondary gain from her somatic symptoms, such as sympathy and support from her friends and her boyfriend. The dependency does not seem fake or contrived, and appears unconscious and is not evident in her behavior. There had been no evidence of this dependency in my prior contact, when she was determined and independent as she recovered from depression, in order to escape an abusive marital relationship.
>
> The MVA seems to have contributed to the heightening of this dependency, although unmet emotional dependency needs were existent prior to the MVA, probably precipitating the depression at the time. She portrays self-confidence, and does not impress as needy, dependent or manipulative in her behavioural presentation. The present situation allows her to be cared for while maintaining a strong fight. The pain seems to allow her to be dependent by providing a bonafide reason at face value (ie physical pain) to be dependent and obtain sympathy from others thereby allowing underlying dependency needs to be met while maintaining independence by denying needs of emotional dependency.

. . . .

> [The Appellant] has requested that MPI fund our sessions. I believe that this is a valid request. None of her situation is contrived or faked. [The Appellant] is an honorable person. My comments that the need for her psychological care is related to the MVA comes in my comparison of her previous and present states. It is probable that the MVA had an impact on her which resulted in an increase of her psychological characteristics described herein and the psychological distress. The pain has increased as a result. Had the accident not occurred I do not believe that she would be in the strongly distressed (via somatization) state in which she is in now; the state would be from mild to absent.
>
> The DSM-IV diagnoses are 307.89 Pain Disorder Associated with both Psychological Factors and a General Medical Condition and 309.81 Posttraumatic Stress Disorder. I note that [Appellant's doctor] is querying fibromyalgia. The onset of these Disorders is related to the MVA as they did not exist in my contact with her prior to the MVA, when I doubt she would have met the criterion for somatization disorder, in spite of some milder somatic symptoms at the time. I do not note this diagnosis in any of the notes from that period of time. There has been no other physical trauma. However, the psychological factors and personality makeup which pre-existed the accident related to a history of marital abuse and unmet emotional dependency needs interacted with the bonafide pain and discomfort she experienced in the MVA to produce the current situation and diagnosis.
>
> The problem exists two years after the MVA simply because the psychological factors described herein have remained untreated for this period of time. There is no evidence in any of the notes apart from the need for continued supportive psychotherapy that these deeper factors were addressed in her ongoing treatment. This may have been because she was deemed not ready for such treatment due to depression and the possibility of relapse. However, [The Appellant] is intellectually open to exploring such a possibility, and two years after the MVA without a significant relapse in depression requiring hospitalization suggests that she may be able to withstand a deeper psychotherapy approach. In fact, such an approach appears required to weaken the somatizing experience.
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> . . . .
>
> She could not return to her job as Customer Service Agent because of the severity of her experience of pain which limits her functioning and movement as noted above in her behavioural responses to psychological testing.

At about the same time, the Appellant was also referred by her family physician to [text deleted], a specialist in physical medicine and rehabilitation. In his report dated August 13, 2002, [Appellant's physical medicine and rehabilitation specialist] opined as follows with regards to the Appellant's condition:

> Impression:
>
> 1. WAD-II – whiplash.
> 2. Chronic pain syndrome.
> 3. Posterior element dysfunction:
>   - Greater occipital neuralgia via prabable C2/3 hyper facet arthropathy,
>   - Probable C5/6 facet arthropathy with posterior scapulothoracic girdle tenderness.
>
> The noted sclerotomal tenderness likely reflects this as opposed to a neurogenic cause. Some L5 dysfunction is also noted.
>
> In light of the above, the neck dysfunction appears likely related to the car accident. The lower back discomfort is harder to discuss and may well reflect other issues. Without a clearer history, no other comments can be made. There is no evidence of on going neurogenic issues, so no advanced imaging is indicated.

The Appellant also underwent an independent psychiatric assessment with [independent psychologist] on August 19, 2002. In his report dated August 23, 2002, [independent psychologist] concluded as follows:

> [The Appellant's] primary Axis I diagnosis appears to be Pain Disorder associated with both psychological factors and a general medical condition. The psychological factors that predispose [the Appellant] to experiencing chronic pain appear to be her depressive disorder and dependent personality traits. Although these traits clearly were existent prior to the motor vehicle accident the initial physical injuries (which formed the underpinnings of [the Appellant's] subsequent development of a pain disorder) were incurred as a result of the motor vehicle accident of August 6, 2000.
>
> . . . . .
>
> It is beyond the scope of my expertise to comment on any specific physical functional deficits that [the Appellant] may be experiencing. As mentioned earlier in my report [the Appellant] is not currently clinically depressed with no significant deficits evident in motivation, energy and concentration. [the Appellant] did report that she is unable to sit or stand for a prolonged time period and further indicated that she had concerns with regard to her abilities to operate a computer mouse for prolonged periods of time due to complaints of pain and weakness in her right hand. It was my clinical impression that [the Appellant] was not particularly motivated to return to her job at [text deleted] as she indicated that she is "not an indoorsy type" regarding work.

[Appellant's psychologist's] and [independent psychologist's] reports were reviewed by [text

deleted], consulting Clinical Psychologist for MPIC's Health Care Services Team, with regard to the need for psychological treatment for the Appellant. In his report dated September 20, 2002, [MPIC's psychologist] opined that:

> Comments
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> Both [Appellant's psychologist] (August 8, 2002) and [independent psychologist] (August 23, 2002) indicate that the claimant is suffering from a chronic pain disorder associated with both psychological factors and a general medical condition. This condition is causally related to the MVA in question. Both also indicate the history of depression and dependent personality traits that likely contributed to the development of the chronic pain. [Appellant's psychologist] also proposes the diagnosis of Post Traumatic Stress Disorder although there is no specific diagnostic information to support this diagnosis.
>
> In terms of treatment, both clinicians' suggest that the claimant does need therapy focusing on her chronic pain. [Appellant's psychologist] provides a clear treatment plan in this regard. [
> independent psychologist] also recommends continued treatment with antidepressant medication as a prophylactic measure as well as possible increases in her dosage of Amitriptyline.
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> Opinion
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> Based on these recent reports, it is my opinion that the claimant does suffer from a chronic pain disorder resulting from her MVA of August 6, 2000. Furthermore, the psychological treatment plan presented in [Appellant's psychologist's] report should be supported. [Independent psychologist's] recommendation to continue antidepressant medication should also be supported. . . .

[MPIC's psychologist] provided a further report dated October 18, 2002 specifically regarding whether the Appellant had a psychological condition causally related to the motor vehicle accident which would make her unable to work. In conclusion, his report indicates that:

> Summary
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> There are 3 recent opinions on the file which indicate that the claimant is suffering from a chronic pain disorder 9[Appellant's physical medicine and rehabilitation specialist], [independent psychologist] and [MPIC's psychologist]), but that her recurrent depression is in remission due to the medication she continues to take. [Appellant's psychologist] also proposes the diagnosis of PTSD but does not offer any information to support this claim in terms of diagnostic criteria. There is evidence on the file indicating that her chronic pain is improving with the use of Amitriptyline and that further increases in this

> medication are warranted. Furthermore, the Athletic Therapist who was treating her stated that her tolerances for sitting, walking, pushing/pulling, and lifting had improved and that her reported pain was significantly less. The claimant also has been involved in several return to work programs and had progressed to the point where she was driving 4 hours per day, 3 times per week in February, 2002. [Appellant's psychologist] does offer the opinion that the claimant could not return to her job as a Customer Service Agent because of her observed difficulties with pain during the time she was filling out assessment forms at his office. He had the claimant rate her pain during the assessment and she stated it was 5-6 out of 10. [Independent psychologist] does not really comment on the claimant's ability to work, but does note that the claimant did not seem motivated to return to her customer service job.
>
> Conclusion
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> Based on the information reviewed, it is my opinion that the claimant does not have a psychological condition that would prevent her from holding either a truck driving or customer service job. While [Appellant's psychologist] does offer an opinion on the customer service job, I do not believe that a person's difficulty completing testing material should be viewed as support that she unable to hold down a job. Furthermore, it is not clear from [Appellant's psychologist's] report how long she could actually sit during the interview process with him which would be an important part of a customer service or truck driving job. A report from the Athletic Therapist who worked with the claimant over a much longer period of time and who is better able to offer an opinion regarding the claimant's work ability indicates that her pain was improving as well as her other tolerances. Based on this report, [MPIC's doctor] offers the opinion that the claimant no longer requires supervised therapy interventions as of June 10, 2002.
>
> Information on the file indicates that the claimant is certainly more inclined toward the truck driving job as opposed to the customer service job. This is evident from [independent psychologist's] report, the claimant's own report to the case manager and her involvement in the return to work plan in the fall of 2001 and winter of 2002.
>
> Evidence on file indicates that while the claimant does have chronic pain, it appears to be manageable (5-6 out of 10) and is improving with both medication and physical treatment. It is anticipated that the psychological intervention she is receiving will further assist her in managing her pain and will help her explore vocational options in the truck driving industry.

[Text deleted], Medical Consultant to MPIC's Health Care Services Team also reviewed the Appellant's file in order to provide an opinion with respect to the Appellant's physical and psychological ability to return to work as a truck driver. In his report dated December 5, 2002, [MPIC's doctor] concluded as follows:

CONCLUSION

Based on my review of [the Appellant's] file, it is my opinion that the medical evidence supports the following conclusions:

1. [The Appellant] does not have a psychological impairment to the extent that she is unable to perform work as a truck driver.

2. [The Appellant] has not been identified as having objective evidence of a physical impairment of function that would preclude her from performing work as a truck driver and/or customer service agent as of April 22, 2002.

3. The medical evidence indicates that the medical conditions [the Appellant] developed as a result of the incident in question have resolved to the extent that further therapeutic interventions would not be viewed as a medical requirement. Treatments such as physiotherapy, trigger point injections, and paraspinal blocks would be viewed as elective only. Trigger point injections and paraspinal blocks would be viewed as invasive treatment options and would not be considered medically advisable or necessary since there is insufficient documentation in the medical literature of the long-term safety and efficacy of these injection techniques.

In response to the Appellant's Application for Review of the case manager's decision of May 27, 2002, the Internal Review Officer issued a decision dated January 7, 2003. In his decision, the Internal Review Officer relied upon [MPIC's psychologist's] conclusion that the Appellant's psychological condition did not prevent her from holding either a truck driving or a customer service job, and upon [MPIC's doctor's] conclusion that there was no objective evidence that the Appellant had a physical impairment of function that would have precluded her from working in either capacity. As a result, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision.

As previously noted, the Appellant has appealed from the Internal Review decision of January 7, 2003 to this Commission.

At the hearing of this appeal, counsel for the Appellant submitted that the Appellant was not

capable of returning to work as of June 7, 2002, due to the devastating effects which the motor vehicle accident had on her. He maintains that the Appellant is a hard working, honest, ethical individual who is not exaggerating her symptoms and who genuinely wants to return to work. He notes that despite her best attempts, she simply has not been able to manage and sustain a return to the workplace.

Counsel for the Appellant submits that the Appellant's inability to return to work was due to a combination of physical and psychological factors which resulted from the injuries which she sustained in the motor vehicle accident. In this regard, he notes that all of the Appellant's caregivers are in agreement that she was not capable of returning to the workplace as of June 7, 2002. In support of his position, counsel for the Appellant relies upon the following opinions from the Appellant's caregivers:

- In his report dated January 3, 2003, [Appellant's physical medicine and rehabilitation specialist] noted that the Appellant had good response to his physical based treatments. Her pain was much improved, with the frequency and duration of her pain complaints much reduced in comparison to previously. He also noted that the Appellant's function was increased and she was contemplating volunteering.
- In his report dated April 7, 2003, [Appellant's psychologist] noted the following with regards to the Appellant's progress:

> On my recommendation, [the Appellant] has been gradually increasing her exposure to competitive situations. Accordingly she has been volunteering at the [text deleted] Hospital in a geriatric ward since early February assisting the activity worker with seniors' activities. She pushes patients around in their own wheelchairs and assists them on their outings. She enjoys this work and says that it is worth it in spite of the pain she experiences. She has been encouraged to continue in this work and to work through the pain experience. She continues to do this and appears motivated to do so. However she is only able to work a few hours a week.

> She is also considering other volunteer/work/training possibilities but is not yet ready to return to a competitive work situation.
>
> She has been slowly improving physically. She is now seeing a chiropractor. Physical pain has appeared partly related to physical causes and partly to emotional causes. She is psychologically conflicted. She has become aware that her body pains may have psychological roots, and pain has been subsiding as she has been developing this awareness. She is loosening up tight emotions which were previously submerged into her body. However, shoulders resist the relaxation experience, partly for emotional reasons. This resistance partly occurs because the body has been on guard against trauma. The fear has been displaced figuratively onto the subjective experience of the shoulders and arms which were directly involved in the MVA.
>
> . . . . .
>
> There is submerged anger, as shown in passive-aggressive behavior and somatization. She feels misunderstood and strongly feels a need for validation. Pain is emotional pain submerged in body from being misunderstood. She is conflicted about feeling vulnerable; the pain allows her to avoid facing vulnerability as such. The MVA has been associated with victimization, vulnerability and associated pain. She is conflicted about the victim role, and is consciously refusing this role while still behaving as if she is in this victimization role. We are working to reframe the situation to remove herself and to dissociate the MVA from this victimization role, and to detach herself from any involvement with needing this role.

- In his report dated December 8, 2003, [Appellant's psychologist] provided the following opinions with regards to the Appellant's condition:

> In my opinion both the motor vehicle accident and the resulting injuries had a traumatic psychological impact. The accident itself produced a significant emotional trauma, as she experienced anxiety, depression and withdrawal, and the injuries contributed to this by causing a significant blow to her self-esteem by limiting her previously active lifestyle, where she had been involved in sports which raised her self-esteem.
>
> The accident and the injuries caused a significant psychological disability. This contributed to her inability to function normally for an extended period of time. In addition to causing undue emotional suffering, the emotional trauma rendered her unable to function both in her work and in her daily living for an extended period of time. She has very recently overcome this emotional trauma and has very recently begun working again, in a retail position.
>
> For her, as for many people, psychological distress results in an increase

> of physical pain. She converts emotional symptoms into somatic complaints, including but not limited to pain, particularly in times of stress. She experienced significant pain, and her pain had some psychological overlay. To some extent her somatic symptoms reflected converted emotion from this psychological trauma involved in the MVA. For example, fear had been displaced figuratively onto the subjective experience of the arms and shoulders, which were directly involved in the MVA and which apparently experienced some physical involvement.
>
> Diagnostically, she experienced Pain Disorder Associated with both Psychological factors and a General Medical Condition, as well as Post-Traumatic Stress Disorder.
>
> She reports that she is unable to return to her previous employment as a long-distance truck driver. In my opinion this has a valid psychological cause, as it relates, in part, to the emotional trauma she experienced in the Motor Vehicle Accident, since both involve driving in a vehicle.

- [Appellant's doctor] provided a report dated December 5, 2003 where she indicated the following with regards to the Appellant's condition:

> [The Appellant] developed a muscular pain syndrome as a result of her motor vehicle accident in 2000. She has made significant improvements in her level of functioning and pain management especially over the last year Her endurance has improved dramatically so that she is now able to manage a full time job. The physical demands of this job however in no way compare to her previous employment as a truck driver.
>
> I feel the health care professionals involved in her care have effectively treated her. [The Appellant] has had exacerbations of her symptoms related to emotional stressors and increased physical demands. As she is no longer receiving any chiropractic or rehabilitation therapy, she is currently managing her symptoms by limiting her activities and continuing with home exercises. Given her history thus far it is likely that she will require intermittent therapy in order for her to maintain her level of functioning.
>
> Multiple factors affect [the Appellant's] status on a day-to-day basis. She requires rest periods if she has over extended herself to keep her pain under control. Emotional stressors have increased her pain in the past. Although [the Appellant] has a history of depression prior to her accident, hardships encountered as a result of the accident i.e. physical pain and financial difficulties have worsened her symptoms of depression. Treatment and sessions with [Appellant's psychologist] and [Appellant's psychiatrist] and pharmacotherapies have been beneficial.

> [The Appellant] continues to improve and I anticipate she will make a good recovery. She presently does not have the endurance to be employed as a truck driver. It is debatable whether this would ever be a possibility for her.
>
> It is difficult to say at what point in the last three years [the Appellant] would have been able to do any type of work. She has made repeated attempts to return to her job as a truck driver, but was unsuccessful due to the physical demands and hours required.

- [Appellant's chiropractor #2] in his report dated November 28, 2003, comments that:

> **Clinical Impression**
>
> On the basis of the above findings it is my opinion that this patient is suffering from a hyper flexion/hyperextension sprain and strain to the ligaments, joints and musculature of the cervical, upper thoracic, lower thoracic and lumbosacral spine, a right knee sprain, and a right ankle sprain, and a sprain and strain injury to the temporomandibular joint. This would account for the symptoms as described by the patient as well as the physical findings upon examination. It is likely that the above injuries would have been caused as a result of the accident as described by the patient.
>
> . . . .
>
> **Disability**
>
> At the present time, [the Appellant] is mildly disabled. She was able to return to part time work in early April of 2003, and full time work in June of 2003. At present she is working in retail and is not yet capable to return to her job as a semi-trailer operator. She is presently able to work if she is conscious of her posture at all times. She has to be careful not to perform any repetitive or heavy tasks as this will serve to fatigue her musculature and return her to a symptomatic state.
>
> **Prognosis**
>
> The prognosis in this case is good at the present time. If [the Appellant] receives adequate care, which should consist of chiropractic care and athletic therapy, she should be able to return to her regular duties with in 6-12 months. It should be born in mind however that the principal injury was one of ligamentous and muscular strain and sprain and trauma to the joints and as a result posttraumatic pathology is possible. This will likely take the form of osteoarthritic deterioration. The likelihood of this increases if she does not receive adequate treatment to achieve her pre-injury state.

Based upon the foregoing medical opinions, counsel for the Appellant submits that the Appellant's chronic pain syndrome and pain disorder, as diagnosed by both [Appellant's psychologist] and [independent psychologist] prevented her from functioning in the workplace. He notes that, whether the Appellant was also suffering from post-traumatic stress disorder as diagnosed by [Appellant's psychologist], her condition was such that she was unable to return to work on June 7, 2002. He claims that irregardless of the precise diagnosis, her condition was debilitating for her, and prevented her from resuming her pre-accident level of functioning. As such, counsel for the Appellant submits that the Appellant was unable to hold employment as of June 7, 2002, due to the injuries sustained in the motor vehicle accident and as a result she is entitled to reinstatement of her IRI benefits.

Counsel for MPIC submits that the Appellant is not entitled to a reinstatement of her IRI benefits because:

1. the problems which prevented her from returning to work were not directly attributable to the motor vehicle accident; and
2. even with her physical and psychological problems, she was capable of returning to employment, either as a customer service agent or as a truck driver.

Counsel for MPIC maintains that at the time of the motor vehicle accident, the Appellant was already having difficulty coping and was exhibiting symptoms consistent with depression. He claims that she already had a tendency to somatize her pain – she was suffering from headaches, no longer coping at work, was stressed and probably depressed, factors which led her to seek a leave of absence from the workplace. According to counsel for MPIC, these pre-existing problems continued to develop after the motor vehicle accident and manifested as physical

problems for this Appellant.

Counsel for MPIC submits that the Appellant's physical injuries, which she sustained in the motor vehicle accident had long since resolved by June 2002. He notes that by July 2001, [Appellant's chiropractor #1] indicated that the Appellant could return to work as a customer service agent and to truck driving. Again, in February 2002, she was able to drive a truck, she only stopped because of the insurance issue. Counsel for MPIC also relies on [independent doctor's] report of April 3, 2002, and his opinion that the Appellant had no impairment of physical function related to this motor vehicle accident and the soft tissue injuries which she sustained in this accident would not have precluded her from returning to the work that she held at the time of this accident. He also notes that [independent doctor] had concluded that the Appellant had long since recovered from the impairment of function that she had immediately following the accident. According to [independent doctor's] opinion, the Appellant would have been able to resume her pre-accident duties and/or a graduated return to work program at approximately three months post-accident. As a result, counsel for MPIC submits that the Appellant was physically able to return to work by June 7, 2002.

Counsel for MPIC also submits that from a psychological perspective the Appellant was capable of working. In support of his position, counsel for MPIC relies on the opinion of [MPIC's psychologist] expressed in [MPIC's psychologist's] report dated February 11, 2004, wherein [MPIC's psychologist] indicates that:

> **Opinion**
>
> The previous review of the file completed on October 18, 2002 concluded that the claimant did have a Chronic Pain Disorder and a recurrence of pre-existing depressive symptoms that would be causally related to the MVA in question. The proposed diagnosis of PTSD was not substantiated by the medical information provided. As noted in the previous review, the Chronic Pain disorder was significantly improving with

> treatment and the Depression was in remission. Based on this information, the opinion was offered that the claimant did not have a psychological condition that would prevent her from working at her determined occupation.
>
> The most recent report from [Appellant's psychologist] indicates that the claimant had a significant emotional trauma resulting from the MVA that rendered her unable to function at work or in her daily life "for an extended period of time" and that only recently the claimant has overcome this trauma and has now begun work again in a retail position, but is unable to return to truck driving. Once again, the information on file does not support the diagnosis of PTSD, nor is there a clear indication as to how long the claimant was unable to function at work or in her daily life. As noted previously, the claimant was described as improving from a pain perspective and was in fact, driving a truck on a part time basis as part of a return to work program until February, 2002. This information would therefore seem to contradict the statement that she was rendered unable to function in her work or daily life and only recently overcame this trauma to the degree that she could engage in alternate employment.
>
> Based on the review of this new psychological report, the previously stated opinion of October 18, 2002 that the claimant did not have a psychological condition that would prevent her from holding her determined employment remains unchanged.

Alternatively, counsel for MPIC submits that the Appellant's psychological problems were not caused or exacerbated by the motor vehicle accident. He claims that the Appellant's psychological problems were not directly caused by the motor vehicle accident. Although, the accident may have been one of many triggers for her emotional and psychological problems, the ongoing factors were financial problems, relationships, work, and various other stressors. Counsel for MPIC maintains that the Appellant's physical problems were caused by the somatization of her emotional and psychological problems, which problems were not directly caused by the motor vehicle accident. Accordingly, counsel for MPIC concludes that either the Appellant was physically and psychologically capable of returning to work by June 7, 2002 or the problems which she continued to experience were not directly related to the motor vehicle accident of August 6, 2000. Accordingly, counsel for MPIC submits that the Internal Review decision of January 7, 2003 should be confirmed, and the Appellant's appeal dismissed.

Discussion

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant was not capable of holding employment, either as a truck driver or as a customer service agent as of June 7, 2002.

The Internal Review Officer based his decision upon the opinions provided by [MPIC's psychologist] and [MPIC's doctor], that neither the Appellant's psychological condition, nor her physical condition, precluded her from working as a customer service agent or as a truck driver. However, the Internal Review Officer did not have the benefit of the opinions provided by [Appellant's psychologist], after he had commenced treating the Appellant, and the testimony he provided to this Commission.

[Appellant's psychologist] was of the opinion that the Appellant was not able to return to work until March 2003, although even at that time, not on a full-time basis. He indicated that the Appellant was not ready for work prior to that time because of her depressed state, her tearfulness limited her ability to function, and her pain experience. According to [Appellant's psychologist], in July 2002, the Appellant couldn't have held any employment of any type. She could not sit, she could not even complete tests in his office and she was continuously complaining of pain. [Appellant's psychologist] indicated that both the motor vehicle accident and the resulting injuries caused a significant psychological disability for this Appellant. This contributed to her inability to function normally both in her work and in her activities of daily living.

The Commission accepts [Appellant's psychologist's] opinion with respect to the Appellant's functional capacity beyond June 2002. We find that [Appellant's psychologist], having observed

the Appellant in August 1998 and again commencing in June 2002, was in the best position to comment on her functional capabilities. He also had the opportunity to observe her over an extended period of time through his treatment sessions with her. As such, his opinion that she was not capable of working in any capacity until March 2003 at the earliest, convinces us, on the balance of probabilities, of that fact. In this situation, we find that the comments and observations made by [Appellant's psychologist], who had the benefit of personally observing the Appellant and treating her throughout the relevant time, must be preferred to those of [MPIC's psychologist], who was at the disadvantage of not being able to personally assess the Appellant. Additionally, relying upon [Appellant's psychologist's], [independent psychologist's] and [MPIC's psychologist's] opinions, we find that the Appellant's chronic pain disorder associated with both psychological factors and a general medical condition was causally related to the motor vehicle accident of August 6, 2000.

Lastly, the Commission relies upon the Appellant's own presentation and testimony at the appeal hearing. We found the Appellant to be a credible individual who had made genuine significant attempts at returning to work throughout the course of her recovery period. We note that her gradual but quite definitive improvement over the post-accident period, was corroborated by her caregivers, and she impressed as a honest and credible individual with legitimate complaints. As a result, we find that the Appellant's entitlement to IRI benefits shall be reinstated as of June 7, 2002, and shall continue until such time as it is terminated or suspended in accordance with the MPIC Act. In accordance with Section 163 of the MPIC Act, the Appellant shall be entitled to interest upon the monies due to her by reason of the foregoing decision.

2. Entitlement to reimbursement for medication expenses

The Appellant claims reimbursement for the prescription medications – Celexa, Novolorazem and Amitriptyline. The Internal Review decision dated January 7, 2003 rejected her Application for Review on the basis that the requirements for the various medications were no longer related to the motor vehicle accident of August 6, 2000. The Internal Review Officer relied upon [Appellant's psychiatrist's] report of May 16, 2002 which stated:

1. [The Appellant] was first prescribed Celexa on August 9, 2001, which would be three days after her motor vehicle accident.
2. The medication is not prescribed to treat her motor vehicle accident but to treat the depression, which undoubtedly has been contributed to by the debilitation consequenced by her motor vehicle accident. She does have a history of previous depressive episodes and undoubtedly the motor vehicle accident was a precipitant to a further relapse.
3. This medication is now being prescribed independent of the motor vehicle accident and will be continued until her depression is in full remission or until there is some other reason to negate its' continuance.

The Internal Review Officer also relied upon [MPIC's doctor's] report of June 5, 2002, wherein [MPIC's doctor] concluded that the medical evidence indicated that the Appellant no longer required any further pharmacological treatment in the management of the conditions arising from the motor vehicle accident.

The relevant sections of the MPIC Act and Regulations are as follows:

136(1)(d) of the MPIC Act, which provides that:

> **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.

Section 38 of Manitoba Regulation 40/94, which provides that:

> **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.

In order for the Appellant to qualify for reimbursement of these medications, the medications must be required for a medical condition resulting from the accident. [Appellant's psychiatrist's] opinion, expressed in his letter of May 16, 2002, is clear that the Celexa was being prescribed independent of the motor vehicle accident-related injuries. The Appellant presented no medical evidence at the hearing of the appeal to contradict the opinion of [Appellant's psychiatrist]. The Commission therefore determines, based upon the opinion provided by [Appellant's psychiatrist], that the requirement for the prescription medication Celexa is no longer due to a medical condition resulting from the motor vehicle accident of August 6, 2000.

Amitriptyline, an anti-depressant with a sedative action, was prescribed for the Appellant by her family physician, [Appellant's doctor], commencing in June 2002. Initially, the Amitriptyline facilitated further improvement in the Appellant's physical status and in her sleep pattern. [Appellant's physical medicine and rehabilitation specialist] in his report dated August 13, 2002, notes the following with respect to the Appellant's usage of Amitriptyline:

> The good response she has had with athletic therapy and Amitriptyline is not surprising. However, the interaction between the Celexa and Amitriptyline is likely precipitating some of her beneficial effect, augmenting serum levels of both. Baseline Amitriptyline levels were drawn today. Likely, further augmentations (if significantly sub-therapeutic) to even therapeutic levels would be helpful here, with goal of preventing additional side effects. Maximal goal should be approximately 45 to 50 mg a day. Increments in 5 to 10 mgs/week or slower would be worthwhile here. Maintaining current dose of Celexa would be useful despite recent evidence of higher-dose SNRI conferring greater benefit.

[Independent psychologist], who assessed the Appellant on August 19, 2002, concluded in his report dated August 23, 2002 that:

> Treatment recommendations would include following through with the therapeutic interventions that appear to have been initiated by [Appellant's physical medicine and rehabilitation specialist]. Treatment with antidepressant medications should continue, particularly given the recurrent nature of [the Appellant's] depressive disorder. Further increments in the dose of Amitriptyline is a consideration given the partial symptomatic improvement evidenced when the Amitriptyline was initiated.

[MPIC's psychologist], in his Inter-Departmental Memorandum dated September 20, 2002, also commented on the use of Amitriptyline as follows:

> Opinion
>
> Based on these recent reports, it is my opinion that the claimant does suffer from a chronic pain disorder resulting from her MVA of August 6, 2000. Furthermore, the psychological treatment plan presented in [Appellant's psychologist's] report should be supported. [independent psychologist's] recommendation to continue antidepressant medication should also be supported. A possible increase in the claimant's Amitriptyline could be explored by her attending physician.

The Commission notes that these medical reports were provided subsequent to [MPIC's doctor's] report of June 5, 2002. Based upon the opinions of [Appellant's physical medicine and rehabilitation specialist], [independent psychologist] and [MPIC's psychologist], the Commission finds that the requirement for the prescription medication Amitriptyline is due to the Appellant's chronic pain disorder resulting from her motor vehicle accident of August 6, 2000. Although Amitriptyline is an antidepressant, it is also widely used as a atypical analgesic in the management of pain conditions. As a result, we find that the Appellant is entitled to be reimbursed for the prescription medication Amitriptyline.

With regards to the prescription medication Novolorazem or Lorazepam, there is insufficient information before the Commission to determine whether this particular medication was required for a medical condition resulting from the accident.

Given the Appellant's pre-existing conditions, the requirement for Novolorazem, which is used in the management of anxiety disorders and insomnia (amongst other conditions) could not be sufficiently attributed to the motor vehicle accident without additional information. There was no evidence presented to the Commission as to when this medication was first prescribed, or for what purpose. It was also not entirely clear whether [Appellant's psychiatrist's] opinion, expressed in his letter of May 16, 2002, was also meant to refer to the Novolorazem, since the case manager had specifically requested his opinion on the ongoing requirement for that medication as well. In any event, we find that the Appellant has failed to establish, on a balance of probabilities, that Novolorazem was prescribed due to a medical condition resulting from the accident of August 6, 2000.

3. Entitlement to reimbursement of chiropractic treatments

The Internal Review decision dated January 7, 2003 confirmed the case manager's decision dated June 12, 2002, which determined that the Appellant would no longer be entitled to funding of therapeutic interventions as of July 6, 2002.

The Appellant underwent an examination with [text deleted] a chiropractor, on January 7, 2003 and thereafter commenced treatments with [Appellant's chiropractor #2]. The Appellant is seeking reimbursement from MPIC of the costs of those treatments. Counsel for MPIC and for the Appellant agreed that since the Internal Review decision of January 7, 2003 denied any additional funding of any further therapeutic interventions, the Internal Review decision was broad enough to encompass further chiropractic treatments, and accordingly, this matter could be dealt with by the Commission as part of the present appeal.

On January 5, 2001, the Appellant commenced chiropractic care with [text deleted], chiropractor, for treatment of her motor vehicle accident related injuries. In his report dated May 23, 2001, [Appellant's chiropractor #1] commented on the Appellant's condition as follows:

> Diagnosis: [The Appellant] is still suffering with the symptoms of a WAD 3 cervical trauma and associated neurological and physical deficiencies of the extremities associated to the cervical strain. She is also suffering from some lingering affects associated to a torsional strain sprain of the lumbar region as a result of the seat belt.
>
> Functionally [the Appellant] has improved considerably. She is now able to sit and stand for longer periods of time and has begun to exercise to improve strength in all functions. Ranges of motion in all areas of the back have improved and consequently discomfort levels have decreased. Due to the amount of soft tissue injury and mechanical dysfunction and her current rate of progress I would suggest that by June 10th [the Appellant] should be able to return to work on a graduated work schedule of:
>
> 4 hrs. – 1 & 2 week
> 6 hrs. – 3 & 4 week
> 8 hrs. – 5 week
>
> [The Appellant] is currently receiving chiropractic care on a 2 X/week basis with her condition continuing to improve. I would suggest care continue at that rate with further update after her return to work, as it is expected that initially the work load will be significant for [the Appellant]. Further exam and update will be done before June 30, 2001.

In a report dated February 26, 2002 from [text deleted], the Appellant's family physician, [Appellant's doctor] comments that:

> Aug 23, 01 – She reports that her pain is manageable if she does next to nothing. She has now been attending a sports therapist three times per week and although progress is slow she feel this helpful. She is continuing with chiropractic treatments, but is not sure that this is beneficial.
>
> Sept.6, 01 – There is progress with the sports therapist. She has decided to hold off on chiropractic treatments as is no longer finding them helpful. Sleep is poor and daily functioning is limited. Daughter is doing most of the chores in the home including meal preparation and grocery shopping. Minor improvements in ROM on exam, but is still globally decreased. Upper back muscles tender and tight.

On January 24, 2003, the Appellant attended upon [Appellant's chiropractor #2] for examination and commenced treatments with him. In his report dated November 28, 2003, [Appellant's chiropractor #2] comments that:

> **Clinical Impression**
>
> On the basis of the above findings it is my opinion that this patient is suffering from a hyper flexion/hyperextension sprain and strain to the ligaments, joints and musculature of the cervical, upper thoracic, lower thoracic and lumbosacral spine, a right knee sprain, and a right ankle sprain, and a sprain and strain injury to the temporomandibular joint. This would account for the symptoms as described by the patient as well as the physical findings upon examination. It is likely that the above injuries would have been caused as a result of the accident as described by the patient.
>
> **Treatment**
>
> Chiropractic adjustment therapy was utilized, consisting of specific manipulative corrections of interosseous disrelationships. Muscle relaxation techniques, as well as cross fibre massage was utilized in order to loosen hypertonic musculature.
>
> **Progress**
>
> To date the progress of this patient has been good. The global range of motion in her cervical spine has returned to normal. At the present time abnormalities in the lower cervical and upper thoracic vertebral biomechanics persist as well as hyper tonicity in the trapezius musculature.
>
> Physical findings in the lumbar spine consists of lumbar lateral flexion which is restricted to 20 degrees bilaterally, the normal being 35 degrees. Right kemp test was positive. Lumbar forward flexion produced tension in her right leg. The left sacroiliac joint was fixated with the right sacroiliac joint being hyper mobile. Abnormal vertebral biomechanics were located in the lumbosacral spine, and sacrospinalis muscles were hyper tonic.
>
> [The Appellant] reported that her symptoms are not as severe and that she only suffers with the occasional headache. If she is careful to keep her stress levels down, her neck does not bother her.
>
> **Disability**
>
> At the present time, [the Appellant] is mildly disabled. She was able to return to part time work in early April of 2003, and full time work in June of 2003. At present she is working in retail and is not yet capable to return to her job as a semi-trailer operator. She is presently able to work if she is conscious of her posture at all times. She has to be careful not to perform any repetitive or heavy tasks as this will serve to fatigue her musculature and return her to a symptomatic state.

Prognosis

> The prognosis in this case is good at the present time. If [the Appellant] receives adequate care, which should consist of chiropractic care and athletic therapy, she should be able to return to her regular duties with in 6-12 months. It should be born in mind however that the principal injury was one of ligamentous and muscular strain and sprain and trauma to the joints and as a result posttraumatic pathology is possible. This will likely take the form of osteoarthritic deterioration. The likelihood of this increases if she does not receive adequate treatment to achieve her pre-injury state.

At the appeal hearing, counsel for the Appellant submitted that the Appellant should be reimbursed for the cost of the treatments with [Appellant's chiropractor #2]. He argued that the chiropractic treatments with [Appellant's chiropractor #2] were beneficial for the Appellant, helped her cope with her chronic pain and thereby assisted with the Appellant's eventual return to work. Counsel for the Appellant therefore concludes that since the chiropractic treatments were helpful for the Appellant, and of assistance with her return to work, they should be reimbursed by MPIC.

In order to qualify for funding under the Personal Injury Protection Plan contained in the MPIC Act and Regulations, expenses must be incurred by a victim because of the accident, and must be medically required. The relevant sections of the MPIC Act and Regulations are as follows:

> Section 136(1)(a) of the MPIC Act provides that:
>
> **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;
>
> Section 5(a) of Manitoba Regulation 40/94 provides that:

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;

Upon a careful review of all of the evidence on the Appellant's file, the Commission is unable to conclude that chiropractic care was medically required for treatment of the Appellant's accident-related injuries, as of January 24, 2003. There was insufficient medical evidence presented to this Commission, respecting the therapeutic requirement for chiropractic care for this Appellant, commencing approximately 2 ½ years post-accident. As a result, the Commission finds that the Appellant, has failed to establish, on a balance of probabilities, that chiropractic care beyond January 24, 2003, was medically required as a result of injuries sustained in the motor vehicle accident of August 6, 2000.

Dated at Winnipeg this 16th day of June, 2004.

YVONNE TAVARES

DR. PATRICK DOYLE

PAUL JOHNSTON