Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-98-36

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Mr. Paul Johnston** **Mr. Wilson MacLennan**
APPEARANCES:	**The Appellant, [text deleted], was represented by [Appellant's representative];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.**
HEARING DATE:	**July 19 & 20, 2004**
ISSUE(S):	**Entitlement to Personal Injury Protection Plan benefits after July 30, 1997**
RELEVANT SECTIONS:	**Section 110(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act')**

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

Reasons For Decision

[The Appellant], was involved in a motor vehicle accident on June 5, 1995. Following this motor vehicle accident the Appellant reported symptoms of headaches, soreness in her neck and shoulders, as well as a low back soreness. Prior to the motor vehicle accident she was employed full time as a social worker.

The Appellant was treated by her family practitioner, [text deleted], who saw her on June 6, 1995. In his report, [Appellant's doctor #1] indicated that the Appellant complained of

headaches and backaches, lightheaded feeling and difficulties in sleeping. [Appellant's doctor #1] further stated that he felt the Appellant had reactivated her previous injuries and he advised her to arrange for physiotherapy and decrease her work to half time.

The Appellant was unable to return to her full time employment after the motor vehicle accident and MPIC reimbursed the Appellant in respect of Income Replacement Indemnity ('IRI') benefits, homecare, rehabilitation mobility aids, physiotherapy and rehabilitation occupational therapy and counseling until July 30, 1997, when her benefits were terminated by MPIC.

MPIC's case manager, in a letter to the Appellant dated July 30, 1997, indicated that the Personal Injury Protection Plan ('PIPP') benefits were terminated because the Appellant's complaints of vertigo, which prevented the Appellant from returning to her full time employment, pre-dated her motor vehicle accident and that she had reached a physical level of function to perform her duties as a social worker. The Appellant rejected MPIC's position and asserted that, prior to the motor vehicle accident, she was able to work full time and ran her own business. She further asserted that as a result of the motor vehicle accident her pre-existing symptoms had been exacerbated and she continued to experience symptoms and problems which prevented her from returning to work on a full time basis.

The Appellant's Application for Review was rejected and, as a result, she filed an appeal to the Commission in respect of MPIC's rejection of her PIPP benefits.

In order to determine the issue in this appeal the Commission is required to consider the medical history of the Appellant prior and after her first motor vehicle accident in 1991, and the effect of the injuries she sustained in her 1991, 1992 and 1995 motor vehicle accidents. As a result the

Commission was required to review a number of medical reports which were filed in these proceedings.

Medical History

At the appeal hearing which occurred on July 19 and 20, 2004, the Appellant testified that she had been involved in two motor vehicle accidents prior to the motor vehicle accident of June 5, 1995. She testified that the first accident occurred in July of 1991 in [text deleted] and she was seriously injured, suffered a fracture to her pelvis and lost consciousness. She also experienced dizziness following the accident and developed sacral pain and discomfort. A report from [text deleted], dated August 28, 1995 filed as Exhibit 1 in the appeal proceedings and indicated that the Appellant was off work as a result of this accident for 106 days between July 11, 1991 to December 31, 1991.

Unfortunately, the Appellant was involved in a second motor vehicle accident in May of 1992 and developed further neck and back pain, as well as headaches and problems with balance. However, subsequent to this motor vehicle accident she was again able to return to work full time until the motor vehicle accident on June 5, 1995.

[Text deleted], a neurologist, in a report dated January 2, 1996 to [Appellant's doctor #1], indicated that he had treated the Appellant in respect of vertigo prior to the 1991 motor vehicle accident. [Appellant's neurologist] in his report stated:

> She originally presented, with vertigo, I felt labyrinthine, sometime after dental work had been carried out, this was in the mid to late 1980's. She improved dramatically from that, but in 1991, after an automobile accident, in [text deleted], as a passenger behind the driver, she was quite severely injured, had a fractured pelvis, was kept in hospital for about a month, did lose consciousness, for some minutes, and had dizziness, for about eight weeks after that, i.e. spinning, with quick head movement, this slowly improved to the point where it dissipated completely. She has subsequently had ongoing sacral pain,

> sometimes her legs are weak when she tries to stand and she needs to lean against something, she has had some tingling in her left lateral foot, all since, this accident in July, 1991.
>
> She was then rear ended, in 1993 (sic), her head was deviated to the left at that time, and since then, she had more back pain, and into her left shoulder, plus left occipital headache, which occurs about once a week, lasts two or three days, spreads to the frontal region, all in the left side. As well since this accident in 1993 (sic), she has had worse balance, walks somewhat wide based, and is unsteady, plus a spinning sensation, which returned at that time, and has not dissipated, since then. (underlining added)

Prior to the 1995 motor vehicle accident [Appellant's doctor #1] had referred the Appellant to [text deleted], a physiatrist, for his assessment. [Appellant's physiatrist #1] saw the Appellant over a significant period of time and a number of his medical reports were filed at the appeal hearing and are set out as follows:

1. [Appellant's physiatrist #1] in a report to [Appellant's doctor #1] dated June 29, 1993, indicated that he had seen the Appellant that day and reported that:

   > She reported today that she was still not sleeping well at night. She was continuing to manage her employment but her energy and pains at the end of the day continued to prevent her from discharing (sic) domestic duties.

2. [Appellant's physiatrist #1], in a Progress Report to MPIC dated December 23, 1993 indicated that the Appellant was suffering from chronic lumbar myofascial pain syndrome and a fibromyalgia syndrome and further indicated the Appellant was suffering from pain problems and low energy. He further indicated that the Appellant was continuing employment full time with difficulties and recommended that she be seen by a clinical psychologist for counseling.

3. [Appellant's physiatrist #1] provided a further report to [Appellant's doctor #1] on January 7, 1994 and stated:

   > I saw [the Appellant] again at my clinic this morning.
   >
   > I last saw her on November 18 at which time she reported that her soft

> tissue pains are worse. Reviewing the patient's symptoms, it was evident that she was continuing to suffer from sleep dysfunction. She was not rested first thing in the mornings and this was now associated with a ½ to 1 hour of morning stiffness. She was still working full-time five days a week and was finding the discharge of her duties more difficult, not only because of pain but also because of low energy level. Further, she was having increased tingling in the fingers and had noticed digital swelling and episodes of coldness in the fingers. She also had had some episodes of diarrhea and constipation.
>
> Re-examination of the patient showed continuing myofascial pain, particularly in the low back. . . . .

4. [Appellant's physiatrist #1], in a report to the Appellant's legal counsel dated February 28, 1994, stated:

> In my opinion, it is highly probable that the persisting muscle pain in the back and pelvic girdle was initiated by the injuries to the pelvis sustained in the first motor vehicle accident. The second motor vehicle accident aggravated the myofascial pain and caused the emergence of further muscle involvement in the neck and shoulder girdle.
>
> The patient has subsequently developed a further complication. Persisting muscle pain, related to both accidents, coupled with sleep dysfunction and increasing difficulty in coping with discomfort and lifestyle, has led to the emergence of a primary fibromyalgia syndrome.
>
> . . . .
>
> At the present time she is maintaining her employment but remains restricted in her physical activites (sic) outside the workplace. The probability in her prognosis is that of very slow functional improvement.

5. In a further report to [Appellant's doctor #1] dated March 1, 1994 [Appellant's physiatrist #1] stated:

> I saw [the Appellant] again at the [Hospital #1] this morning. I have been advised that Autopac would probably not cover Clinical Psychology assessment and I really feel now that this is not necessary. The patient still reports quite considerable disability but I feel that she is clearly making a better job with her life and a better capacity to cope and adjust her daily living activities.
>
> She is still working full-time but has to miss occasional days becaue

> (sic) of fatigue. She is able to cook evening meals after work but is unable to do any housework by herself and requires help from her son and his girlfriend. She has been unable thus far to return to such recreational activities as curling, skating, cross country skiing and aerobics.
>
> Morning stiffness has increased a little in the last few weeks. Sleeping has improved and she is still taking Trimipramine 12.5 mg at bedtime. She should continue with this.
>
> Clinically she still has myofascial taut bands in shoulder girdle and low back muscles. However the count of anatomical areas for fibromyalgia pain has once again dropped to 8 out of 18.
>
> . . . . .
>
> Prognostically I would think that there is going to be very slow improvement. What she has at the present time is going to be what she has to live with for the next few months but ultimately I would expect a very slow improvement in the patient's physical or functional daily capacities.

6. [Appellant's physiatrist #1], in a subsequent report to [Appellant's doctor #1] dated December 9, 1994, indicated that the Appellant's medical condition was deteriorating, she was suffering from increased pain, including ankle difficulties, difficulty sleeping, dizziness and difficulties maintaining her employment.

[Appellant's physiatrist #1] referred the Appellant to [text deleted], a clinical psychologist at the [Hospital #2], who provided a report to the Appellant's legal counsel on January 16, 1995:

> [The Appellant] came to the session willingly and presented in an open and honest fashion. Your client detailed for me the events following her serious car accident in [text deleted] in July, 1991 and her second accident in Manitoba in May, 1992. [The Appellant] indicated that her back was re-injured in this later accident, along with sustaining injuries to her left shoulder and neck area. She went on to say that she felt this second accident had set back her physical recovery at least six months. Your client stated that she has constant low back pain, shoulder and neck pain, sleep difficulties, dizziness, and reports feeling depressed (no suicidal ideation) and having little energy.
>
> The difficulties noted above have altered [the Appellant's] life at both work and in her home. While your client was able to return to full-time employment after a period of recovery following her accident in [text deleted], she has become increasingly worried that because of the pain, she will be unable to keep up the quality of her work on the job.

> As a result, [the Appellant] is fearful that she will not be able to maintain her employment. Additionally, your client stated that she is not able to complete many tasks in the home and is unable to participate in activities she previously enjoyed outside the home such as curling and skiing.

[Appellant's physiatrist #1] saw the Appellant in the spring of 1995 and he provided a report to [Appellant's doctor #1] dated May 26, 1995 and stated:

> I saw [the Appellant] again at my clinic yesterday. She was last seen on April 4 at which time sleep was still a problem and I introduced Cyclobenzaprine in a dose of 10 to 20 mg before bed. Subsequently I received a report of the MRI which showed no abnormality. She is still having attacks of dizziness with what appears to be true vertigo associated on occasions with nausea and vomiting. She has been in contact again with [Appellant's doctor #2]. I do not believe these symptoms can be attributed to her myofascial pain syndrome. (underlining added)

[Appellant's physiatrist #1] further indicated that there appeared to be an improvement in respect of the Appellant's fibromyalgia and also stated:

> I have advised her to continue with the medication and with her home stretching program. She is scheduled to continue with [Appellant's clinical psychologist] in counselling sessions.
>
> She is managing to sustain her employment with no significant difficulty in the workplace. However, she has no energy and hurts too much after work to be able to adequately discharge her domestic duties or develop recreational activity to help her further improvement in physical conditioning.
>
> She is going to discuss this with her employer and see if it would be possible for her to reduce her hours of work during the summer so that she could spend a little more time in improving her lifestyle and fitness. If such an arrangement is possible I will provide her with the necessary medical certificate for her workplace. Provisionally I will see her again in the fall. (underlining added)

Several days after [Appellant's physiatrist #1] saw the Appellant the Appellant was involved in a motor vehicle accident on June 5, 1995. In her Application for Compensation dated June 9, 1995 the Appellant complained of injuries resulting from the motor vehicle accident as *"Headaches, sore neck & shoulders, lower back"*.

[Appellant's doctor #1] saw the Appellant on June 6th and in a report to MPIC dated June 14, 1995 [Appellant's doctor #1] stated that the Appellant could work part time and that the Appellant's occupational restrictions were getting in and out of a car. In an undated Physician's Statement [Appellant's doctor #1] stated that he expected the Appellant's partial disability to last three or four months.

[Appellant's doctor #1] referred the Appellant for assessment by [text deleted], a neurologist, who provided a report to [Appellant's doctor #1] dated January 2, 1996 (referred to earlier in this Decision). [Appellant's neurologist] had assessed the Appellant six or seven years prior to January 2, 1996. After commenting on her accidents of 1991 and 1992, [Appellant's neurologist] addressed the motor vehicle accident in 1995 and stated that the Appellant had even more dizziness since this motor vehicle accident and described it as "*. . . a spinning, usually with quick head movement, but recently she had a severe episode, without any known precipitant, so much so, she would have been rendered incapacitated, . . . ".* (underlining added) [Appellant's neurologist] further stated:

> Her primary complaints thus are left neck and shoulder discomfort, low back discomfort, and the aforementioned vertigo.
>
> . . . . .
>
> It is my impression the left shoulder and neck pain are related to soft tissue, there is nothing in the left arm to suggest nerve root disease, the low back pain, also I feel is probably soft tissue, the vertigo, I think is end organ. (underlining added)

In his submission MPIC's legal counsel asserted that the meaning of end organ meant an inner ear systemic problem.

[Appellant's doctor #1], in a report dated May 3, 1996, indicated that:

1. due to problems with muscle pain and fatigue the Appellant is unable to increase her

work hours.

2. he does not expect much improvement over the next few years and it is fairly likely that the Appellant will only be able to work part-time hours.
3. the Appellant continues to see [Appellant's physiatrist #1] regularly for her musculoskeletal problems and [Appellant's doctor #2] for her dizziness.

In a report by [Appellant's nurse], a registered nurse with the [text deleted]., dated July 15, 1996, the Appellant reported to [Appellant's nurse] that:

1. she was seen by [Appellant's doctor #2] and [Appellant's doctor #3] for further testing on June 26, 1996 and that she was informed at that time that the balance organs of her left inner ear are not working and if surgery was used to try and correct this deafness could result.
2. she had been working on a part-time basis since the motor vehicle accident and although her goal is to return to her full-time job her position was recently reclassified to a part-time position and that if she is able to work full-time she will be assigned to the first full-time position that becomes available.

[Appellant's doctor #2], in a report to [Appellant's doctor #1] dated July 16, 1996, stated:

> With the assistance of [Appellant's doctor #3] and the [text deleted], we were able to conduct rotation tests on the above named patient on June 27, 1996. We were able to demonstrate that [the Appellant] does have some residual vestibular function left in both ears. It is asymmetric and its characteristics closely match those from previous head shake testing that we have discussed with you.

[Appellant's doctor #2] further stated in his report that having regard to a negative MRI for intracranial component, he believes that he is still looking at a left-sided peripheral vestibular problem which is not totally compensated.

On October 8, 1996 [text deleted], a clinical advisor in the Neurology Rehab Service at the [Hospital #2], wrote to [Appellant's nurse] of the [text deleted] in respect of the Appellant and stated that:

1. the Appellant was referred to their department in July 1996 by [Appellant's doctor #2] with a diagnosis of left vestibulopathy.
2. Initial assessment was started on September 9, 1996, and finished on October 01, 1996, (due to vacation of the undersigned) and findings are as follows:
    1. Main complaints are dizziness, nausea and loss of balance.
    2. Symptoms are increased by head movements and lack of visual fixation.
    3. Decreased proprioception causing a decrease in balance.
3. vestibular rehabilitation was started immediately following the completion of the assessment with home exercises and that normally a course of vestibular rehabilitation lasts for approximately 3 months with 2 half hour sessions every week.
4. during the course of therapy the Appellant may experience an increase in symptoms.

On November 8, 1996 [Appellant's nurse] provided a report to MPIC wherein the Appellant reported that:

1. she continued to complain of increased pain in her neck and shoulders since the beginning of September and that she also reported that her balance had been worse since she started the vestibular therapy and she had several episodes when her balance problems have become severe.
2. she was given a new position at work in September which she continues to find very stressful.
3. she continues to work half days and feels she is unable to do more than this at the present time.

4. she is unable to visit clients outside of the workplace due to her balance problems.

On March 19, 1997 [Appellant's physiatrist #1] provided a report to [Appellant's doctor #1] and indicated that he saw the Appellant on March 6, 1997 and stated:

> . . . . She reported that she had a further flare-up of her myofascial pain and dysfunction in February and still had some residual discomfort from that exacerbation. She was sleeping a little better at night but was still not rested in the morning and was stiff in the neck and shoulder girdle and getting out of bed.
>
> Clinically, there was outer range of motion stiffness in the neck and shoulder girdle. There was some diffuse tenderness and tightness in muscles but only in the left upper trapezius muscle was there an actual myofascial taut band.

[Appellant's physiatrist #1] further stated:

> The patient is continuing to work on a half day basis and, given the length of history and the persistence of her symptoms, I believe that this is the only level of employment which will be appropriate for her in the foreseeable future.

The case manager referred the entire medical file to [text deleted], Medical Consultant, MPIC's Health Care Services Department. [MPIC's doctor], after reviewing all of the medical reports, stated in a Inter-Departmental Memorandum dated July 14, 1997 that:

1. the Appellant had pre-existing problems with vertigo which may or may not have been related to the previous motor vehicle accidents which she was involved in, or as a result of an inner ear disorder that [Appellant's physiatrist #1] had alluded to in one of his reports.
2. [Appellant's doctor #2] made reference to a peripheral vestibular problem but made no comment as to its etiology.
3. the Appellant had symptoms of vertigo prior to her June 1995 collision and there is no medical documentation to indicate that, as a result of the 1995 motor vehicle accident, this problem with vertigo was worsened in any permanent way.

4. "*. . . . The medical information did indicate that the collision resulted in an aggravation of these symptoms only. [The Appellant] also developed symptoms involving her neck, shoulders and back for which she received physiotherapy and based on the reports submitted by the physiotherapist, showed good response to her treatment to the point she was discharged on a home exercise program. [The Appellant] was assessed neurologically by [Appellant's neurologist] and it was his opinion that she did not sustain any neurological injury as a result of her 1995 motor vehicle collision*".

5. *"The medical information in [the Appellant's] file indicates, to me, that [the Appellant] has been unable to take on full-time work as a result of her vertigo and symptoms of dizziness and unsteadiness. This medical condition and these symptoms pre-dated her motor vehicle collision. In fact, [Appellant's physiatrist #1] was considering requesting [the Appellant's] employer to reduce her hours through the summer of 1995 as a result of symptoms she was experiencing in particularly, decrease in energy. This lack of energy also appeared to be a factor in [the Appellant's] present inability to increase her working hours. The medical information does not support the opinion that due to symptoms involving her neck, shoulder, and back, [the Appellant] is unable to return to a full-time position"*.

6. *"Considering the fact that [the Appellant's] job is sedentary in nature and her response to the treatment she received was that of improvement, it is my opinion that [the Appellant] is not experiencing musculoskeletal symptoms, which have developed as a direct result of her 1995 motor vehicle collision, which would prevent her from returning to her previous employment on a full-time basis. It is therefore my opinion that [the Appellant's] problems with vertigo, dizziness, and unsteadiness, which are not a direct result of the June 5, 1995 motor vehicle collision, are the medical*

reasons why [the Appellant] has been unable to return to her full-time position".

7. *"It is my recommendation that MPI should no longer provide financial assistance in covering treatments for [the Appellant's] symptoms since she has now reached her pre-accident status and the symptoms she is experiencing are related to pre-existing medical conditions. This would include specialized treatment for her vertigo in the form of physiotherapy and medication (Serc)".*

The case manager adopted the medical opinion of [MPIC's doctor], and wrote to the Appellant on July 30, 1997 terminating the Appellant's PIPP benefits. In her letter to the Appellant the case manager indicated that the reasons which prevented the Appellant from returning to work full time were unrelated to the 1995 motor vehicle accident and that the Appellant had reached the physical level of function which would have permitted her to perform her duties as a social worker full time.

Internal Review Officer's Decision

The Appellant made application to have an internal review of the case manager's decision. On January 13, 1998 the Internal Review Officer rejected the Application for Review and confirmed the case manager's decision. The Internal Review Officer based her decision on the report of [text deleted], MPIC's Medical Consultant, and after a full review of the Appellant's file, the Internal Review Officer stated:

> [Appellant's doctor #1] stated that [the Appellant] is unable to work a full time position as a result of muscle pain and fatigue. These symptoms predated her June 1995 motor vehicle collision. It is for those above reasons that she is not able to increase her work hours from part time to full time. Therefore, her inability to increase her hours to full time are not as a result of symptoms that developed from her June 1995 motor vehicle collision and there is no medical evidence that [the Appellant] still requires treatment for any symptoms she suffered from the motor vehicle accident. Therefore, it is my decision that there are no benefits owing to [the Appellant] from her motor vehicle accident of June 1995 as she is at pre-accident status and the motor vehicle accident is not impacting

her present condition.

Appeal

The Appellant filed a Notice of Appeal dated February 25, 1998 and stated:

> The reason I wish to appeal the decision are as follows:
>
> The symptoms that I am presently experiencing have prevented me from working full time. Prior to the accidents, I was working full time and running my own business. The accident of June 5, 1995, exacerbated my symptoms and as a result of that exacerbation I have continued to experience symptoms and problems which have prevented me from returning to work on a full time basis and running my independent business. The accident of June 5, 1995, contributed to the symptomatology that I am experiencing presentinly (sic). I have been able to manage my symptoms by working half time, as soon as I get tired my balance goes.

The relevant provision of the MPIC Act in respect of this appeal is Section 110(1)(a) of the MPIC Act which provides:

> **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;

Subsequent to the filing of the Notice of Appeal, [Appellant's doctor #1], the Appellant's personal physician, referred the Appellant to [text deleted], a physiatrist, at the [Hospital #1]. [Appellant's physiatrist #2] provided two reports to [Appellant's doctor #1] dated December 8, 2003 and June 6, 2003 and one report to MPIC's legal counsel dated February 20, 2004.

[Appellant's physiatrist #2] in his report dated June 6, 2003 to [Appellant's doctor #1] indicated that he had treated the Appellant in the spring of 2001 in respect of her myofascial pain syndrome caused by three separate motor vehicle accidents on July 11, 1991, May 13, 1992 and June 5, 1995. He further reported that the Appellant had advised him that she became

completely free of pain following her last treatment on July 17, 2001.

[Appellant's physiatrist #2] further reported to [Appellant's doctor #1], in a letter dated December 8, 2003 and indicated that he had treated the Appellant's complaints in respect of neck pain, lower occipital headaches, pain along the left upper trapezius to the shoulder between August 13, 2003 and November 7, 2003. He further reported that at the conclusion of his treatments the Appellant had progressively improved over a period of the last six treatment visits.

[Appellant's physiatrist #2] provided a report to the Appellant's solicitors by letter dated February 20, 2004. In this report he indicates he saw the Appellant on February 4, 2004 in respect of the Appellant's complaints relating to her left side of her neck and along the left upper trapezius.

[Appellant's physiatrist #2] further stated:

> 5) I did not see [the Appellant] after any of her motor vehicle accidents. By history it is the 1995 MVA that caused the most severe and persistent symptoms, as well as her inability to return to full time work. It is impossible on a physical examination, or by any imaging studies, to determine which of her three accidents caused her symptoms persisting at the present time. On a temporal basis, it is the June 5, 1995 MVA that is responsible for her ongoing and persistent symptoms.

At the appeal hearing the Appellant testified as to her medical condition prior to the 1995 motor vehicle accident. She asserted in her testimony that notwithstanding the motor vehicle accidents in 1991 and 1992 she was able to return to her work full time and was able to run a business at the same time. She further acknowledged that her medical problems which pre-dated the 1995 motor vehicle accident but asserted that these medical problems did not prevent her from

carrying on an active life without the need for homecare, rehabilitation mobility aids, physiotherapy and occupational therapy as well as counseling which she now required. She also testified that due to the 1995 motor vehicle accident that her medical problems were exacerbated resulting in a reduction of her hours of work from full time to part time and resulting in the need for homecare, rehabilitation aids, physiotherapy, occupational therapy as well as counseling.

The Appellant's legal counsel reviewed the relevant medical reports and submitted that:

1. the Appellant was a candid witness and the Commission should accept her testimony that her existing medical problems were exacerbated by the 1995 motor vehicle accident, resulting in a reduction of her hours of work and the need for therapeutic interventions.
2. the Commission should accept [Appellant's physiatrist #2's] opinion that on a temporal basis the June 5, 19995 motor vehicle accident was responsible for her ongoing and persistent symptoms.
3. having regard to the testimony of the Appellant and the medical opinions of [Appellant's doctor #1] and [Appellant's physiatrist #2], MPIC wrongly terminated the Appellant's PIPP benefits on July 30, 1997 and these benefits should be reinstated.

MPIC's legal counsel submitted that:

1. the medical evidence established that the Appellant's medical symptoms which resulted in a reduction of her work from full time to part time and the need for therapeutic interventions was caused by vertigo, dizziness, unsteadiness, fatigue and lack of energy pre-existed the 1991 motor vehicle accident and were not caused by the 1995 motor vehicle accident.

2. [Appellant's neurologist's] report dated January 2, 1996, established that prior to the 1991 motor vehicle accident he treated the Appellant in respect of vertigo. [Appellant's neurologist] in this report stated he could not be certain what was causing the vertigo but he believed that it was "end organ" which MPIC's legal counsel submitted meant an inner ear systemic problem.
3. [Appellant's physiatrist #1], in his report dated May 26, 1995, reported that he saw the Appellant on May 26, 1995 (shortly before the June 5, 1995 motor vehicle accident) and stated that the Appellant had suffered from an attack of dizziness which appeared to be "true vertigo". He further reported that he was advised by the Appellant that after work she has no energy and it hurts too much to be able to adequately discharge her domestic duties or to develop recreational activity to help her further improvement and physical condition. [Appellant's physiatrist #1] further reported the Appellant advised him that she intended to discuss with her employer reducing her hours at work during the summer in order that she could spend a little more time in improving her lifestyle and fitness. [Appellant's physiatrist #1] also reported that he informed the Appellant that if this arrangement with the employer was not possible then he would provide her with the necessary medical certificate for that purpose.
4. twelve days after the Appellant's visit to [Appellant's physiatrist #1], she was involved in the June 5, 1995 accident.
5. the Commission should not give any weight to [Appellant's physiatrist #2's] opinion as set out in his letter dated February 20, 2004 on a temporal basis the June 5, 1995 motor vehicle accident was responsible for her ongoing and persistent symptoms. MPIC's legal counsel submitted that [Appellant's physiatrist #2] in his report did not consider the effect of vertigo on the Appellant, had not reviewed any of the pre-June

1995 medical reports and [Appellant's physiatrist #2] had not seen the Appellant for several years after the 1995 motor vehicle accident.

6. [MPIC's doctor] had reviewed all of the relevant medical reports of [Appellantj's neurologist], [Appellant's physiatrist #2] and [Appellant's doctor #1] and the Commission should accept [MPIC's doctor's] medical opinion that:
    (a) the primary reasons why the Appellant was unable to return to work was vertigo, dizziness, unsteadiness, fatigue and lack of energy which were not the direct result of the June 5, 1995 motor vehicle accident;
    (b) the complaints that the Appellant had in respect of the 1995 motor vehicle accident had resolved themselves at the time MPIC terminated the Appellant's PIPP benefits on July 30, 1997 and at that time the Appellant reached the physical level of function which permitted her to perform her duties as a social worker full time.

The Commission finds that the Appellant was a candid and credible witness who testified in a straightforward manner in respect of the medical complaints which have adversely affected her quality of life. However, the Commission finds that there is a lack of evidence to causally connect these complaints to the 1995 motor vehicle accident.

The Commission determines that the primary reason the Appellant is unable to continue to work full time and requires therapeutic interventions is due to the vertigo, dizziness, unsteadiness, lack of energy and fatigue which existed prior to the 1995 motor vehicle accident. [Appellant's neurologist], in his report dated January 2, 1996, and [Appellant's physiatrist #1], in his report dated May 26, 1995, both confirm that the Appellant suffered from vertigo prior to the June 5, 1995 motor vehicle accident. [Appellant's physiatrist #2], in his report dated June 6, 2003 stated

that it was impossible on physical examination, or by any imaging studies, to determine which of the Appellant's three accidents caused her symptoms persisting as of June 5, 2003, the date of his examination.

The Commission rejects the medical opinion of [Appellant's physiatrist #2] that on a temporal basis the 1995 motor vehicle accident was responsible for the Appellant's ongoing persistent symptoms. [Appellant's physiatrist #2], in his report dated June 6, 2003, stated that he saw the Appellant in the spring of 2001, treated her for a myofascial pain syndrome and concluded his treatment at the end of July 2001. He further stated in this report that the Appellant advised him that she had become completely free of pain following her last treatment on July 17, 2001. The Commission therefore notes that [Appellant's physiatrist #2] did not see the Appellant approximately six years after the June 5, 1995 motor vehicle accident.

[Appellant's physiatrist #2] further provided a report to [Appellant's doctor #1] dated December 8, 2003 wherein he advised that he had initiated treatment of the Appellant in respect of regional myofascial pain syndrome on August 13, 2003. He further reported that he treated the Appellant between August 13, 2003 and November 7, 2003 and indicated that the Appellant had progressively improved over a period of 6 treatment visits. A period of approximately eight years and two months had elapsed between the June 5, 1995 motor vehicle accident and August 13, 2003, when [Appellant's physiatrist #2] commenced these treatments.

[Appellant's physiatrist #2] in his report to the Appellant's legal counsel, dated February 20, 2004, indicates he next saw the Appellant on February 4, 2004, which was a period of approximately eight years and eight months after the June 5, 1995 motor vehicle accident.

Although [Appellant's physiatrist #2] personally examined the Appellant on a number of occasions, these examinations took place several years after the June 5, 1995 motor vehicle accident. An examination of the three medical reports of [Appellant's physiatrist #2] do not indicate that he had reviewed the medical reports of [Appellant's neurologist], [Appellant's physiatrist #1] or [Appellant's doctor #1] and there is therefore no evidence before the Commission that [Appellant's physiatrist #2] had knowledge of the Appellant's medical history prior to the 1991 motor vehicle accident and after the 1995 motor vehicle accident and therefore did not consider the Appellant's pre-existing medical problems prior to the 1995 motor vehicle accident.

On the other hand, [MPIC's doctor], although he did not personally examine the Appellant, had the opportunity of examining all of the relevant medical reports from [Appellant's neurologist], [Appellant's physiatrist #1] and [Appellant's doctor #1] in arriving at his medical opinion. In these circumstances the Commission rejects the medical opinion of [Appellant's physiatrist #2] and accepts the medical opinion of [MPIC's doctor] on the issue of causality.

The Commission, after a careful review of all of the medical evidence on file, and having regard to the testimony of the Appellant, finds:

1. that the Appellant suffered from vertigo, dizziness, unsteadiness, lack of energy and fatigue prior to the motor vehicle accident.
2. this pre-existing medical condition was the primary reason for preventing the employee from returning to her pre-accident status.
3. any of the injuries the Appellant suffered in the 1995 motor vehicle accident had resolved themselves and she had returned to her pre-accident status at the time MPIC terminated the Appellant's PIPP benefits on July 30, 1997.

4. the symptoms the Appellant was experiencing on July 30, 1997 related to her pre-existing medical conditions and not caused by the motor vehicle accident.

The Commission therefore concludes, having regard to the totality of the evidence presented to it, for the reasons outlined above, the Appellant has failed to establish, on a balance of probabilities, that pursuant to Section 110(1)(a) of the MPIC Act she was unable to work full time and was entitled to receive PIPP benefits because of the motor vehicle accident. As a result, the Appellant's appeal is dismissed and the Internal Review Officer's decision dated January 13, 1998 is hereby confirmed.

Dated at Winnipeg this 18th day of August, 2004.

MEL MYERS, Q.C.

PAUL JOHNSTON

WILSON MACLENNAN