Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-189

PANEL:	**G. Mel Myers, Q.C., Chairperson** **Ms Mary Lynn Brooks** **Ms Deborah Stewart**
APPEARANCES:	**The Appellant, [text deleted], was represented by her husband, [text deleted];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.**
HEARING DATE:	**May 1, 2007**
ISSUE(S):	**Entitlement to Personal Injury Protection Plan benefits for paranoid delusional disorder and left hand condition.**
RELEVANT SECTIONS:	**Sections 70(1) and 71(1) 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

On June 14, 1999 [the Appellant] was crossing [text deleted] on foot when she was struck from behind by a pick-up truck and suffered injuries as a result of the motor vehicle accident. At the time of the accident the Appellant had been employed as a [text deleted] for approximately thirteen (13) years but was not actually working at the time of the motor vehicle accident due to a disabling condition involving her left hand.

In respect of the motor vehicle accident the Ambulance Patient Care Report indicates that paramedics arrived at the scene of the accident at 11:17 a.m. The time the call was received is not indicated (although the statement attached to the Traffic Accident Report suggests that the accident occurred sometime between 11:15 and 11:20 a.m.) [The Appellant] was found in a prone position. All vital signs were normal. The Glasgow Coma Scale was 15/15.

The "Comments" read, in part: "… *Not KO'd [knocked out]. c/o {complained of] headache & pain mid-back. [No] loss of sensation to extremeties (sic). Oriented P.P.T. [person, place, time]. Hematoma [bruise] back of head. [No] abrasions. [No] bleeding. [Patient increasingly] anxious*."

The Emergency Department records indicate the Appellant arrived by ambulance at 11:35 a.m. and was examined at 11:40 a.m. The notes state that she was "*KO'd [for a] few seconds [and] c/o burning pain back of head*". Routine screening to ascertain whether a concussion had been sustained produced results described as "normal". Lumbar and cervical x-rays were also reported as normal.

The stated diagnosis was "*MVA [Motor Vehicle Accident]/Soft tissue injuries*". The Appellant was sent home at 1:45 p.m. the same day.

The only medical report received by MPIC during the first two (2) years after the motor vehicle accident was a form report by [Appellant's chiropractor], dated August 8, 1999 and was based on an examination of the Appellant on July 6, 1999. The report stated that:

1. the Appellant was complaining of neck stiffness and lower back pain accompanied by "decreased mobility".

2. the Appellant had a pre-accident history of chiropractic treatments (1996) and pre-accident history of Reflex Sympathetic Dystrophy ("RSD") affecting her left hand.
3. [Appellant's chiropractor] diagnosed "moderate cervical strain/sprain" and "moderate lumbo-pelvic strain/sprain".
4. the Appellant was not working at the time of the accident due to a "pre-existing disability".
5. he had provided six (6) treatments to date of the report and that his treatments were likely to conclude by January 31, 2000.

MPIC received no communication from or on behalf of the Appellant between August 30, 1999, when MPIC received [Appellant's chiropractor's] report, and in May 2000. [text deleted], the Appellant's husband, contacted MPIC to advance a claim on behalf of the Appellant.

In a memo to file the case manager, [text deleted], outlined a discussion she had with [Appellant's husband] on May 29, 2001. In this memorandum the case manager stated that [Appellant's husband] believed that his wife had suffered from a paranoid delusional disorder as a result of the motor vehicle accident and that the Appellant's RSD, which was present before the motor vehicle accident, had become worse. This memorandum further stated:

> [Appellant's husband] indicated that approximately 20 years ago they lived in a home [text deleted]. He indicated that they had difficulties with the neighbors across the street and at that time, his wife felt that the neighbor had "put out a hit on her". [Appellant's husband] indicated that they moved out of this home many, many years ago and his wife has not brought this issue up.

In this memorandum the case manager further reported that:

1. [Appellant's husband] had further stated that the Appellant apparently believed that she was being stalked, spied upon and that someone was "out to kill her".

2. [Appellant's husband] purchased an elaborate surveillance system which had been set up in the home.
3. [Appellant's husband] wanted to help the Appellant but, due to their engrained cultural norms and expectations the Appellant did not wish to see a psychiatrist due to the social stigma that this would represent within the [text deleted] Cultural Community.
4. [Appellant's husband] was in agreement with the case manager that the Appellant should see [text deleted], a Neuropsychologist, to assess possible brain injury from the motor vehicle accident.
5. [Appellant's husband] indicated that the Appellant had seen [Appellant's neurologist], [text deleted] on May 17, 2001.
6. [Appellant's neurologist] advised the Appellant that she was unable to return to work due to her RSD and that [Appellant's neurologist] would complete a report on her behalf and send it to MPIC.
7. [Appellant's husband] also agreed that he would execute the appropriate forms for medical releases and a document which indicated he was acting as agent on behalf of the Appellant.

[Appellant's neurologist] submitted a report to MPIC dated July 3, 2001. The Internal Review Officer, in his decision dated September 14, 2004, summarizes [Appellant's neurologist's] report as follows:

> . . . The report was based upon a single visit with [the Appellant] on May 17, 2001. [Appellant's neurologist] noted that [the Appellant] had tendon contactures on the three fingers of her left hand which resulted in marked limitations of movement. He found no evidence of RSD.

[Appellant's neuropsychologist] also submitted a report dated July 30, 2001 and the Internal Review Officer summarized that report as follows:

> [Appellant's neuropsychologist] submitted a report dated July 30, 2001. The neuropsychological testing results were essentially normal, apart from some "mild to moderate attentional difficulties". [The Appellant] denied the psychological difficulties described by her husband (who she barred from the room during the assessment), rendering the results of her personality and mood testing "generally invalid". [Appellant's neuropsychologist] noted that: "Interpersonally [the Appellant] was very cooperative, with good social skills, and an interactive manner."
>
> [Appellant's neuropsychologist] found no evidence of a brain injury in [the Appellant], but felt that her sleep cycle might have been affected by the accident and that this, in turn, may have affected her behaviour. [The Appellant] seemed amenable to his suggestion that she be assessed by a psychiatrist so [Appellant's neuropsychologist] initiated a referral to [Appellant's psychiatrist], MC. (underlining added)

[Appellant's neuropsychologist] further stated in this report that the Appellant's Ambulance Report had indicated there was no loss of consciousness at the time of the motor vehicle accident and that there was no indication of a significant concussion having occurred in her medical records.

On September 6, 2001 [Appellant's doctor #1], a General Practitioner, provided a report to the case manager wherein he stated:

1. he had seen the Appellant on June 14, 1999, shortly after the motor vehicle accident had occurred.
2. on examination she was limping significantly, had a small laceration to her scalp and abrasion to her lower back.
3. the following month he indicated that she presented symptoms of depression, insomnia and was prescribed sleeping pills on four (4) occasions.
4. he stated *"I cannot clearly state if this is related to this accident"*.

On August 10, 2001 the case manager wrote to [Appellant's psychiatrist] who had agreed to provide an assessment in respect of the Appellant.

In this letter to [Appellant's psychiatrist], the case manager reported a discussion she had with [Appellant's husband] on June 1, 2001 and stated:

1. *[Appellant's husband] indicated to me that approximately 20 years ago, they lived in a home in [text deleted]. He indicated that he and his wife had difficulty with the neighbours across the street and his wife felt that the neighbours had "put a hit on her". [Appellant's husband] indicated they moved out of this home many years ago and his wife has never brought the issue up again. (underlining added)*

2. [Appellant's husband] advised him of a number of incidents in respect of the Appellant which demonstrated the Appellant's paranoia subsequent to the motor vehicle accident.

3. [Appellant's husband] requested [Appellant's psychiatrist] to provide an assessment which included a diagnosis whether the Appellant's current psychiatric status was related in all probability to the motor vehicle accident of June 14, 1999.

[Appellant's psychiatrist] provided a report to the case manager dated August 30, 2001, indicated that he saw the Appellant on August 2, 2001, and stated:

> [The Appellant] was the pedestrian in a pedestrian motor vehicle accident on June 14, 1999. She stated to me that she was struck from behind by a truck and thrown forward approximately 6 feet. The ambulance report indicates that there was no loss of consciousness and that her Glasgow Coma Scale was 15/15 at the time of the assessment. She was transported to the [hospital], she received treatment there, and was discharged home. The claim was filed at that time, but no bodily injury claim was filed until approximately 1 year later. There is virtually no information relating to her symptoms or medical care, if any, for a prolonged period following the motor vehicle accident.
>
> Apparently, [Appellant's husband] has attempted to establish a claim indicating that [the Appellant] suffered a head injury in the motor vehicle accident. He does describe that her personality has changed significantly following the motor vehicle accident and that her behaviour has become increasingly problematic since that time. He described to you, as indicated in your letter to me of August 10, 2001 several examples of suspicious and paranoid behaviour including:

1. Following the accident [Appellant's husband] indicated that his wife had told him that when she opened her eyes, the gentleman who had hit her was leaning over her and was laughing at her.

2. [The Appellant] apparently has indicated to her husband that the person that hit her was out to kill her.

3. [Appellant's husband] has indicated that his wife has purchased a VCR for their home that monitors the front of their yard and their doors. These tapes continually run and [the Appellant] spends much of her time watching these tapes scanning for suspicious behaviour on the part of the other people.

4. [Appellant's husband] states that he can not make any phone calls from home as his wife feels that the lines are tapped and they have to be careful as people are conspiring against her.

5. You also have information from [the Appellant's] son that supports the information that she has purchased expensive VCR equipment for purposes of monitoring her home in order to be able to identify intruders or people who are out to harm her in some way.

[Appellant's psychiatrist] further stated in this letter that in this interview the Appellant:

1. focused exclusively on her sleep difficulty, which she indicated had commenced after the motor vehicle accident.

2. described herself as not being depressed and described that she had no experiences of paranoia or hallucinations.

3. *A significant component of the collateral history was collected from yourself as [Appellant's husband] has been unwilling to speak with me regarding the information presented above. I am assuming for purposes of this report, that the information that you have documented is a valid reflection of the information that [Appellant's husband] conveyed to you.*

In this letter [Appellant's psychiatrist]:

1. reviewed [Appellant's neuropsychologist's] report wherein [Appellant's neuropsychologist] found that there was no evidence of any brain injury.

2. stated that he was unable to obtain relevant information from the Appellant because she was not willing to discuss various subjects or the problems being indicated by her husband and her son to [Appellant's neuropsychologist] and to the case manager.

3. in response to the case manager's questions, stated:

> **What is your diagnosis?**
> There is strong evidence that [the Appellant] has had symptoms of delusional disorder for many years, as indicated by the history reported to you by [Appellant's husband] (above). . . However, based on comments from her husband, it seems that her symptoms of delusional disorder are particularly active, and have been for some time following the motor vehicle accident. Exactly when these symptoms worsened, and what factors led to this deterioration are not at all clear to me. (underlining added)
>
> As [the Appellant] did not discuss her delusional symptoms with me, it remains a small, and remote possibility that she experiences none of these symptoms and that the information is not accurately presented to you by her husband and son.
>
> The differential diagnosis is Delusional Disorder secondary to Traumatic Brain Injury. There is very little evidence to support that there was a significant traumatic brain injury that occurred at the time of the motor vehicle accident. Additionally, it would be very unusual for a brain injury to present in this fashion. Also of note is that [the Appellant's] previous symptoms of delusional disorder make it very unlikely that the motor vehicle accident directly contributed to her current symptoms of delusional disorder. (underlining added)
>
> It may be the case that stressors resulting from the motor vehicle accident, insomnia that she reports to have experienced since that time, and other sequelae of the motor vehicle accident may have caused some degrees of biopsychosocial stress that has resulted in a worsening of her symptoms of delusional disorder. However, this line of reasoning is highly speculative, and I have no information that would strongly support this line of reasoning at this time. (underlining added)
>
> **Do you feel the claimant's current psychiatric status is related in all probability to the motor vehicle accident of June 14, 1999?**
>
> As indicated above, I do not think that in all probability there is a significant causal relationship between the MVA of June 1999 and her current symptoms. (underlining added)

In a note to file dated August 22, 2001 the case manager reported a discussion she held with [Appellant's husband] on August 20, 2001 and stated:

1. [Appellant's husband] advised her the Appellant had seen [Appellant's psychiatrist], [text deleted], on August 2, 2001 and that the Appellant would not attend [Appellant's psychiatrist] for a second session as she felt that [Appellant's psychiatrist] was prying too much into her psychiatric mind state and not focusing on her sleep disorder "*that is what she attended him for".*
2. She informed [Appellant's husband] that [Appellant's psychiatrist] would like to talk to him on August 28, 2001 but [Appellant's husband] felt there was no point in doing so.
3. She advised [Appellant's husband] of [Appellant's neuropsychologist's] report which indicated that the Appellant did not have a brain injury and [Appellant's husband] was adamant that she did have a brain injury.

In a note to file dated September 25, 2001 the case manager referred to a telephone discussion between herself and [Appellant's husband] and stated that:

1. [Appellant's husband] asked if [Appellant's psychiatrist] could hold off releasing his report until [Appellant's husband] had some time to think about the current situation.
2. she indicated to [Appellant's husband] that she could not do so but that since [Appellant's husband] was the Appellant's agent he should contact [Appellant's psychiatrist] directly.

In a note to file dated October 9, 2001 the case manager reported a discussion she had with [Appellant's husband] on September 21, 2001 as follows:

> [Appellant's husband] indicated that I was incorrect regarding the information that I supplied to [Appellant's psychiatrist] about the neighbors [text deleted] putting a hit on his wife. [Appellant's husband] stated that I have misunderstood and that they did not move from [text deleted] 20 years ago as the neighbours had put a hit on his wife. They moved because they wanted a larger house and their son was excited to be moving to the [text deleted] area as he was going to attend the [text deleted].
>
> Told [Appellant's husband] that I did not agree with his statement that I misunderstood. I advised [Appellant's husband] that the information he was presently telling me regarding why they moved was new information to me. I advised [Appellant's husband] that I would not recant on my statement. (underlining added)
>
> We agreed and drafted a letter to [Appellant's psychiatrist] dated September 21, 2000 indicating the new information and I agreed that [Appellant's husband] could put down that he feels that I misunderstood his information. This will be sent to [Appellant's psychiatrist].
>
> [Appellant's husband] advised that he did not want [Appellant's psychiatrist] to release his report until he has had a chance to think things through and I advised him to submit a letter to me indicating same.
>
> I will be following up with [Appellant's psychiatrist].

[Appellant's husband] prepared a handwritten letter to [Appellant's psychiatrist] dated September 21, 2001 and stated:

> I would like to submit the following to you:
>
> > I spoke with [Appellant's case manager] today. I feel that she misunderstood regarding the notes she submitted to you dated August 13, 2001.
> >
> > [Appellant's case manager] stated that we moved from the [text deleted] as the neighbors "put a hit on her". I told [Appellant's case manager] that she misunderstood and I would like to clarify this issue:
> >
> > - We lived in the [text deleted] until 1985
> > - We moved to [text deleted] because we wanted a larger house and my son was excited to move to the [text deleted] Area as he was attending [text deleted].
> >
> > I am also directing you ([text deleted]) to *not* release the report to anyone at the present time including Manitoba Public Insurance. I will advise [Appellant's case manager] or yourself appropriately of my intentions regarding my wifes claim.

On October 17, 2001 the case manager wrote to [Appellant's psychiatrist]:

> Thank you for your report dated August 30, 2001. Upon review of your report there are a number of clarifications regarding your report.
>
> 1. On page two you indicate in point five that information was received from [the Appellant's] son to support the information that she purchased expensive VCR equipment. I would like to clarify this point that [the Appellant's] son did not tell me this information. [Appellant's husband] told me that his son had information supporting this fact.
>
> 2. On page three Under the Mental Status Exam, I met with [Appellant's husband] on September 21, 2001. He indicated that he felt I had misunderstood him, although I did not agree with this. I enclose the September 21, 2001 correspondence indicating that they did not move because the neighbors had put a hit on her, however, they moved because they wanted a larger house and their son wanted to be closer to the [text deleted].
>
> . . .
>
> I understand there is a second report that you have completed and have not submitted to Manitoba Public Insurance as [Appellant's husband] asked to hold off on releasing this report until he has time to reflect upon the situation. I would ask at this time that you review the documentation enclosed and comment in the unreleased report as an addendum whether this would change your opinion as to the relationship of [the Appellant's] current difficulties related to the motor vehicle accident. (underlining added)

In a note to file dated October 31, 2001 the case manager reported a telephone discussion with [Appellant's husband] and stated that:

1. she confirmed that the letter that both herself and [Appellant's husband] had signed had been sent to [Appellant's psychiatrist].
2. [Appellant's husband] again indicated that the case manager was incorrect in respect of reporting the reason why the Appellant and [Appellant's husband] had moved from the [text deleted] premises.
3. she indicated to [Appellant's husband] that she had not erred in respect of this matter in her report to [Appellant's psychiatrist].

4. [Appellant's husband] was upset and used a "loud tone of voice" in speaking to her.

On November 26, 2001 the case manager prepared a note to file in respect of a telephone discussion she had with [Appellant's psychiatrist] on November 1, 2001 and reported that:

1. [Appellant's psychiatrist] indicated to her that as a result of receiving the letter signed by both herself and [Appellant's husband], she had requested [Appellant's psychiatrist] to add an addendum to his report.
2. In response, [Appellant's psychiatrist] advised her he would not do so until [Appellant's husband] indicated the report could be released.

On the same day [Appellant's husband] wrote to the case manager enclosing certain documents which he requested the case manager to send to [Appellant's psychiatrist], which the case manager did on November 7, 2001.

On May 8, 2002 the case manager produced a Status Report for the file which stated:

> In August of 2001, [Appellant's husband] met with [Appellant's psychiatrist], as [Appellant's psychiatrist] wanted to speak with [Appellant's husband] in order to get further information. After this meeting, [Appellant's husband] was not in agreement to allow [Appellant's psychiatrist] to release updated reports as a result of that meeting. [Appellant's psychiatrist] has advised he will release one if [Appellant's husband] is agreeable.
>
> I last met with [Appellant's husband] on November 6, 2001. I advised [Appellant's husband] that his wife is not entitled to Income Replacement Benefits based on psychiatric issues. The file would be sent to Medical Services for review of the relationship with the RSD and the motor vehicle accident to see if this gives rise to any entitlement for benefits.
>
> [Appellant's husband] has clearly indicated that due to concerns about his wife, Manitoba Public Insurance is not to send any letters or to call his home directly. Therefore, a decision letter has not been sent. (underlining added)

On September 5, 2003 [Appellant's psychiatrist] submitted a follow up report in respect of a meeting he had with [Appellant's husband] on August 20, 2003, for a period of one and one-half (1 ½) hours, and stated that:

1. a week before the August 20, 2003 meeting [Appellant's husband] had forwarded to him a wide variety of information from a number of sources for his review.
2. [Appellant's husband] had stated that his purpose in presenting this information would indicate and clarify for him that there could not have been significant problems in the family years ago because of the number of successes they had.
3. he indicated that at one point in the meeting [Appellant's husband] stated that he wanted him to consider whether any of the information he was providing to him would cause him to change any of the opinions he conveyed in his report to MPIC dated August 30, 2001.

[Appellant's psychiatrist] further stated in this report:

> One of the major themes of [Appellant's husband's] comments to me was that [Appellant's case manager], his former adjudicator at MPI, had provided misleading information to me and that this information caused me to make erroneous conclusions in my earlier report (August 30, 2001) to MPI. Many of his comments in our recent meeting were attempts to dispute the information that [Appellant's case manager] had provided to me. He said at one point that, "The Information [Appellant's case manager] gave to you was all bullshit and this is what you based your opinion on." At another point he stated, "I want to attack [Appellant's case manager's] credibility."
>
> During this recent meeting, [Appellant's husband] reviewed in detail many aspects of the information he brought in, in an attempt to, as he reported, undermine [Appellant's case manager]'s credibility. However, despite his stated desire to present a cogent argument, [Appellant's husband's] presentation of information was vague, and moved quickly from topic to topic in a manner such that it was difficult to ascertain the direction he was moving in his arguments much of the time. . . .
>
> . . . . .

> [Appellant's husband] did indicate that he wanted me to provide a report to MPI, indicating whether any of the information he presented to me would substantively change the opinions in my previous letter to MPI. He signed a permission slip, indicating that he would like me to file a report to you in response to that question.

[Appellant's psychiatrist] indicated that he had reviewed the entire file in order to respond to [Appellant's husband's] request and stated:

> Following my review of the information presented by [Appellant's husband], the entire file, any my previous report, I would not change any of the diagnostic conclusions, nor any responses to the questions asked by [Appellant's case manager] in my August 2001 report.
>
> The reason I would not change any of my previously stated answers and opinions is that I do not believe the information [Appellant's husband] presented to me would substantively impact on the nature of the issues that are most important in this case. Substantive information is as outlined in my previous report and I would ask that you please review it in order to clarify that the information subsequently presented by [Appellant's husband] would not impact significantly on the information previously reported by me. The main factors on which I base this conclusion are as follows:
>
> 3. [The Appellant] was assessed by a neuropsychologist [text deleted], who did not find there to be significant evidence of brain injury.
>
> 4. There was no evidence of a significant brain injury having occurred at the time of the motor vehicle accident. The document ambulance report indicates that she was "not KO'd" (not knocked out). She was oriented to person, place and time. Her Glasgow Coma Scale was 15/15 and there were no abnormal neurological findings at that time.
>
> 5. [Appellant's husband] had indicated to me, as documented in my first report, that, "Following the accident, [Appellant's husband] indicated that his wife had told him that when she opened her eyes the gentleman was leaving over her and was laughing at her. [The Appellant] apparently had indicated to her husband that the person who hit her was out to kill her.
>
> 6. In addition, there is documentation on file dated 01/5/15, the signature of which is illegible but may be that of [Appellant's husband's] [text deleted], [Appellant's doctor #1]. This documentation is three pages in length and starts with, "On May 14/04, I met with [Appellant's husband] regarding his wife's claim. The meeting took more than three hours. As I expected, this is a complicated matter." The writer states in his report, "[the Appellant] apparently lost consciousness as a result of being struck – there was reportedly a bump on the back of her head (occipital area from what her husband says). When she came to,

> she saw the driver of the vehicle that had hit her, saw that he was laughing at her, and she came to the conclusion that he had tried to kill her. She is convinced of this and no reasoning could change her mind regarding this." This report then goes on to document [the Appellant's] abnormal behaviours since the MVA.
>
> My opinion regarding this information is that it would be very atypical for a person to develop a delusional disorder immediately following an accident such as the type [the Appellant] experienced. The hypothesis, as documented immediately above, would seem to be that [the Appellant's] delusional state started immediately following the motor vehicle accident. In my opinion, this hypothesis is inconsistent with any of the known information about the etiology of delusional disorder.
>
> 5. There is much information about [the Appellant's] previous behaviour and thoughts that remains unknown, despite the significant documentation on file and the several conversations I have had with [Appellant's husband]. Specifically, I am referring to the previously cited information that [the Appellant] had paranoid delusions when she lived in [text deleted] many years ago. This information was discussed at length in a previous meeting I held with [Appellant's husband], at his request, in September 2001. A report regarding this meeting has not been released to MPI, although MPI is aware of the meeting and the existence of the report, as [Appellant's husband] had refused to give permission for this report to be released.
>
> In summary, it is my opinion that the motor vehicle accident of June 1999 did not significantly contribute to the psychiatric condition and the mental health impairments that [the Appellant] is noted to be experiencing. The main reason for this opinion is that [the Appellant] did not suffer a significant brain injury at the time of the MVA, that the development of Delusional Disorder would be unlikely to occur in this type of scenario, that the onset of delusional symptoms is report to be immediately following the MVA which I would consider to be very atypical, and that there is some significant question regarding the presence of delusions prior to the MVA. Even if there were no question of delusions predating the MVA, this would not change my opinion in this regard because of the other reasons stated above. (underlining added)

MPIC's case manager referred the Appellant's file to [MPIC's psychologist], [text deleted], for the purpose of reviewing [Appellant's psychiatrist's] diagnostic conclusions as outlined in his reports of August 30, 2001 and September 5, 2003. [MPIC's psychologist] provided a memorandum to the case manager dated November 14, 2003 wherein he stated:

> Based on my review of the psychological/psychiatric information available in the claimant's file, I would concur with [Appellant's psychiatrist's] well articulated opinion that the claimant's Paranoid Delusional Disorder is not, on the balance of probabilities, causally related to the MVA of June 14, 1999. [Appellant's psychiatrist] provides two reports that strongly support this opinion and I would agree completely with his diagnostic and causality formulation in this regard.

Case Manager's Decision dated November 19, 2003

The case manager wrote to the Appellant on November 19, 2003 and stated:

> We have now completed a review of all medical and psychiatric information available regarding the relationship of your paranoid delusional disorder to the motor vehicle accident. I have outlined our decision below.
>
> After assembling all the available medical and psychiatric information, I submitted it for review by our health Care Services Department. Based on the review of this information, a link between your reported psychiatric disorder and the motor vehicle accident has not, on a balance of probability, been established. In the absence of any medical documentation that you sustained a head trauma, makes such an association medically improbable. Therefore, as your complaints are not the result of a bodily injury caused by an automobile, we are unable to provide coverage to you for any expenses associated with this condition.

The Appellant filed an Application for Review of the case manager's decision on January 6, 2004. The Application for Review was prepared by [text deleted], the Appellant's husband, who identified himself on the Application for Review as the agent for the Appellant. The Application stated that the Appellant was not to be contacted by mail or telephone and:

> MPI witheld (sic) important informations
> MPI introduced false informations
> MPI caused bias in medical opinion
> MPI refused the application of the PIPP

The Application for Review form requested the Appellant to provide the documents that the Appellant had intended to use in support of her case. In response, the Appellant's Application form stated:

> Given the complexity of this situation, I cannot even estimate the number of the documents. When ready I will present them.

In his decision, dated September 14, 2004, the Internal Review Officer reports:

> On May 18, 2004, I received 166 pages of material – some handwritten, some photocopies, some downloaded from the Internet – from [Appellant's husband]. A significant portion of the material consists of the minute, word-by-word dissection of some of the memoranda and reports on the file. The cover letter contained the same admonition against making any direct contact with the claimant or her husband. I made a copy of the material for our file and forwarded the original package to your office to be returned to [Appellant's husband].
>
> On June 15, 2004, [Appellant's husband] contacted me by telephone and asked that an in-person hearing be scheduled. I agreed to meet with him on July 13, 2004. A confirming letter was sent to your office on June 21, 2004.
>
> I met with [Appellant's husband] for almost two hours on July 13, 2004. Among other things, I was shown a photograph of him during his military service and photographs of his father and his uncle, who – in their younger years – were champions in [text deleted] in their respective athletic endeavors.
>
> On July 15, 2004, I received another 6-page, single-spaced, handwritten submission from [Appellant's husband].

The Internal Review Officer, in his decision, defines the issue in the appeal as follows:

> **ISSUE**
>
> According to her husband, [the Appellant] suffers from a severe paranoid delusional disorder.
>
> The main issue on this review is whether this condition is causally related to an accident in which she was involved on June 14, 1999.
>
> The case manager determined that a sufficient causal relationship had not been established and that [the Appellant] was not entitled to the PIPP benefits being claimed.
>
> A secondary issue is whether [the Appellant's] pre-existing hand condition was adversely affected in any material fashion by the accident. Although it was not specifically mentioned in the November 19, 2003 decision letter, [Appellant's husband] deals with the matter at great length in his materials, so I have decided to address that issue as well on this review.

The Internal Review Officer proceeds to review all of the relevant medical reports which were contained in the MPIC file, including:

a) the Ambulance Patient Care Report in respect of the Appellant's motor vehicle accident;

b) the Emergency Department records in respect of the Appellant subsequent to the motor vehicle accident;

c) the medical reports of [Appellant's chiropractor], [Appellant's neurologist], [Appellant's neuropsychologist], [Appellant's psychiatrist], [MPIC's psychologist], [Appellant's doctor #1] and [Appellant's doctor #2];

d) the physiotherapy report of [Appellant's physiotherapist];

e) the [text deleted] Disability Claim File in respect to the Appellant;

f) the Affidavit of [text deleted];

g) the discussions between the case manager and [Appellant's husband]; and

h) the discussions between [Appellant's husband] and [Appellant's psychiatrist].

The Internal Review Officer confirmed the decision of the case manager dated November 19, 2003 and dismissed the Appellant's Application for Review on the following grounds:

> **REVIEW DECISION**
>
> While I do not agree with the statement in the November 19, 2003 decision to the effect that there is no evidence of a head trauma from the accident (as noted below, there is some evidence of a head trauma, albeit a minor one), I agree with the ultimate conclusion of the case manager that a probable causal relationship between the accident and paranoid delusional disorder has not been established.
>
> I am therefore confirming the decision dated November 19, 2003 at this time denying further PIPP benefits to [the Appellant].
>
> Had it been necessary for me to determine whether the pre-existing left hand condition had been materially worsened by the accident, I would have concluded that it was not.

> The medical causation theory developed by [Appellant's husband] and his in-depth analyses of the information he has gathered from the medical library and the Internet does not, in the absence of supporting reports from the treating specialists involved, convince me that the necessary causal relationship exists between the accident, on the one hand, and the progress of the condition, on the other.

Notice of Appeal

The Appellant filed a Notice of Appeal dated October 22, 2004.

In this Notice of Appeal the Appellant asserts that the case manager committed a breach of trust by reporting to [Appellant's psychiatrist] that the Appellant, prior to the motor vehicle accident, exhibited paranoia. [Appellant's husband] submits that this information was inaccurate and he attacks the credibility of the case manager. In addition, he asserts that [Appellant's psychiatrist] also has acted improperly and attacks his integrity and motives.

Appeal Hearing – May 1, 2007

The relevant provisions of the MPIC Act in respect of this appeal are:

> **Definitions**
> **70(1)** In this Part,
>
> **"accident"** means any event in which bodily injury is caused by an automobile;
>
> **"automobile"** means a vehicle not run upon rails that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires;
>
> **"bodily injury"** means any physical or mental injury, including permanent physical or mental impairment and death;
>
> **"bodily injury caused by an automobile"** means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused
>
> (a) by the autonomous act of an animal that is part of the load, or
>
> (b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile;

Application of Part 2
71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

[Appellant's husband] was present on behalf of the Appellant, [text deleted], and Ms Dianne Pemkowski appeared for MPIC. The hearing took place on May 1, 2007.

At the commencement of the hearing [Appellant's husband] indicated that the Appellant would not be attending the hearing and that he would be proceeding as her representative in her absence. [Appellant's husband] was requested by the Commission to refer to the medical evidence in support of his position that MPIC erred in refusing to provide Personal Injury Protection Plan benefits to the Appellant in respect of her paranoid delusional disorder and her left hand condition.

[Appellant's husband's] Submission

In response to the Appellant's left hand problem, [Appellant's husband] referred to [Appellant's neurologist's] report dated July 3, 2001. The Commission pointed out to [Appellant's husband] that [Appellant's neurologist's] report indicates that:

1. the Appellant's reflex sympathetic dystrophy (RSD) was a condition the Appellant suffered from prior to the motor vehicle accident.
2. it was impossible for [Appellant's neurologist] to determine that the motor vehicle accident caused the Appellant's hand symptoms.

[Appellant's husband] then proceeded to argue that the case manager misinformed [Appellant's

psychiatrist] as to the contents of the discussion he had with the case manager. The case manager did report to [Appellant's psychiatrist] that she had been informed by [Appellant's husband] that the Appellant did suffer from an incident of paranoia prior to the motor vehicle accident. [Appellant's husband] vehemently denied that he had so informed the case manager and that she had, in error, provided false information to [Appellant's psychiatrist]. [Appellant's husband] further submitted that, as a result of receiving this false information, [Appellant's psychiatrist] had concluded that the Appellant had suffered from a paranoid delusional disorder prior to the motor vehicle accident.

The Commission noted that [Appellant's husband] had requested the case manager to advise [Appellant's psychiatrist] that she had misinformed him in respect of the incident of paranoia, but the case manager refused to retract her remarks in this respect and so advised [Appellant's psychiatrist].

[Appellant's husband] also submitted that [Appellant's psychiatrist] had misinterpreted his remarks that he had made in respect of the Appellant's comments immediately following the motor vehicle accident when [Appellant's psychiatrist] reported that [Appellant's husband] had informed him that immediately after the motor vehicle accident the Appellant had exhibited a paranoid delusional disorder. [Appellant's husband] asserted that, based on [Appellant's psychiatrist's] misinterpretation of his comments, [Appellant's psychiatrist] had erred in concluding that it was very atypical for the Appellant to have developed a paranoid delusional disorder immediately following the motor vehicle accident, such as the type that the Appellant had experienced. [Appellant's husband] further submitted that as a result of the errors committed by both the case manager and [Appellant's psychiatrist], MPIC had wrongly concluded that the motor vehicle accident had not caused the Appellant to suffer from a paranoid

delusional disorder.

The Commission pointed out to [Appellant's husband] that [Appellant's psychiatrist], in his second medical report, indicated that even if the case manager had misinformed him about an incident of paranoia prior to the motor vehicle accident, his main reason for concluding that there was no connection between the motor vehicle accident and the development of the Appellant's paranoid delusional disorder was that she did not suffer from a significant brain injury at the time of the motor vehicle accident. As a result, [Appellant's psychiatrist] had concluded that the onset of the Appellant's paranoid delusional symptoms reported to have occurred immediately following the motor vehicle accident would be very atypical and, therefore, he would not have changed his opinion as requested by [Appellant's husband].

The Commission requested [Appellant's husband] to provide medical information which would establish that, as a result of the motor vehicle accident, the Appellant had suffered an injury to her hand and had suffered from a paranoid delusional disorder. In response, [Appellant's husband] referred to a series of documents he obtained from the Internet and had filed with the Commission. The Commission informed the Appellant that without medical testimony, under oath, confirming the contents of the Internet documentation, the Commission could not give a great deal of weight to this information.

[Appellant's husband] did not call any other witnesses (other than himself) on behalf of the Appellant.

MPIC's Submission

MPIC's legal counsel, in her submission, reviewed the Internal Review decision of the Internal Review Officer and indicated that the medical evidence provided in the reports of [Appellant's chiropractor], [Appellant's neurologist], [Appellant's neuropsychologist], [MPIC's psychologist] and [Appellant's psychiatrist] did not establish, on a balance of probabilities, that the motor vehicle accident caused either the RSD and/or the Appellant's hand problems and/or the Appellant's paranoid delusional disorder and/or her post-traumatic stress disorder.

In response to MPIC's submission, [Appellant's husband] reversed his position and stated that the motor vehicle accident:

1. did not cause the Appellant's RSD complaints, but that the motor vehicle accident had exacerbated the Appellant's existing hand symptoms.
2. did not cause the Appellant's paranoid delusional disorder.
3. had caused the Appellant to suffer from a post-traumatic stress disorder.

The Commission requested [Appellant's husband] to provide medical reports to support his new position. [Appellant's husband] replied that he had no such reports in his possession. In response, the Commission advised [Appellant's husband] that an adjournment would be granted to him in order to permit him to obtain and file such reports with the Commission. In response, [Appellant's husband] stated that it would harm the Appellant's health if she was examined by any medical experts, for the purpose of obtaining medical reports, and therefore he would be unable to produce such evidence.

Discussion

The onus was upon the Appellant to establish, on a balance of probabilities, that as a result of the motor vehicle accident which occurred on June 14, 1999 the Appellant suffered from a paranoid

delusional disorder and/or a post-traumatic stress disorder and/or RSD and/or that her pre-existing left hand condition had been materially worsened. The Commission finds, upon an examination of the medical evidence that was submitted at the hearing, and having regard to the submissions of [Appellant's husband] and MPIC's legal counsel, that the Appellant has not established any causal connection between the motor vehicle accident and the Appellant's paranoid delusional disorder and/or post-traumatic stress disorder and/or RSD and/or any exacerbation problems to the Appellant's pre-existing left hand condition pursuant to Sections 70(1) and 71(1) of the MPIC Act.

RSD and Left Hand Problems

The Commission noted that [Appellant's chiropractor's] report, dated August 18, 1999, indicates that the Appellant had a pre-existing history of chiropractic treatments (1996) and a pre-accident history of RSD affecting the left hand. As well, the Appellant was not working at the time of the accident due to a "pre-existing disability".

The Commission also noted that [Appellant's neurologist], in his medical report, did not indicate that there was a causal connection between the motor vehicle accident and the problems the Appellant had to her left hand. In this report [Appellant's neurologist] noted that the Appellant had tendon contractures of the three fingers of her left hand, which resulted in a marked limitation of movement, but he found no evidence of RSD. However, the Commission also noted that approximately one (1) month later [text deleted], a physiotherapist, who had been treating the Appellant, expressed the view that there was "definitely a relationship" between the accident and the RSD and that he further noted an exacerbation of symptoms when he saw her a few days after the motor vehicle accident. However, he further stated *"…the exact mechanism of how this may have occurred would be information best obtained from an anesthetist or medical*

specialist who deals with RSD".

[Appellant's physiotherapist's] comments are inconsistent with the opinion of [Appellant's neurologist], [text deleted], who found no evidence of RSD. The Commission gives greater weight to the medical opinion of [text deleted], [Appellant's neurologist], who is a medical specialist who deals with RSD, than it does to the opinion of [text deleted], the physiotherapist, who acknowledged that he had no expertise in respect of RSD.

The Commission finds that if the Appellant did suffer from RSD, then the Commission accepts [Appellant's chiropractor's] opinion as set out in his report dated August 18, 1999 that the Appellant had a pre-accident history of RSD affecting her left hand. The Commission also finds that there was no credible medical evidence to support [Appellant's husband's] submission that the motor vehicle accident caused the exacerbation to the Appellant's left hand problem.

The Commission therefore concludes that the Appellant has failed to provide any credible medical evidence that the motor vehicle accident caused the Appellant to suffer from RSD or from an exacerbation of her left hand condition. As well, the Commission also notes that [Appellant's husband], in his reply to MPIC's submission, stated that he was no longer asserting that the motor vehicle accident caused the Appellant to suffer from RSD.

The Commission therefore finds that, having regard to the submission of [Appellant's husband], and the medical reports of [Appellant's chiropractor] and [Appellant's neurologist], the Appellant has not established, on a balance of probabilities, that the motor vehicle accident caused the Appellant to suffer from RSD or an exacerbation of the Appellant's left hand problems. The Commission therefore confirms the decision of the Internal Review Officer dated

September 14, 2004 and dismisses the Appellant's appeal in this respect.

Paranoid Delusional Disorder

An examination of the Ambulance Patient Care Report and the Emergency Department Records in respect of the Appellant's motor vehicle accident did not indicate any evidence of a significant brain injury at the time of the motor vehicle accident. The Ambulance Patient Care Report indicates that she was not 'KOd' and that she was oriented to person, place and time, her Glasgow Coma Scale was 15/15 and there was no abnormal neurological findings at that time.

The Commission noted that the Appellant was assessed by [text deleted], [Appellant's neuropsychologist], who did not find that there was any significant evidence of brain injury.

[Appellant's psychiatrist], [text deleted], in two (2) reports concluded that the Appellant did not suffer a paranoid delusional disorder as a result of the motor vehicle accident. [Appellant's psychiatrist] opined that the main reason for this opinion is that the Appellant did not suffer a significant brain injury at the time of the motor vehicle accident.

[Text deleted], a psychological consultant to MPIC's Health Care Services, reviewed the Appellant's entire medical file including the reports of [Appellant's neuropsychologist] and [Appellant's psychiatrist] and concurred with [Appellant's psychiatrist's] "well articulated opinion" that the Appellant's paranoid delusional disorder was not, on the balance of probabilities, causally connected to the motor vehicle accident.

[Text deleted], the Appellant's husband and spokesperson, had initially submitted that the motor vehicle accident did cause the Appellant to suffer from a paranoid delusional disorder. In

support of this position he submitted that:

1. the case manager had intentionally misinformed [Appellant's psychiatrist] of the existence of the Appellant suffering from an incident of a paranoid delusional disorder.
2. [Appellant's psychiatrist] had intentionally misinterpreted the remarks he made in respect of the Appellant's comments immediately following the motor vehicle accident.
3. as a result of the errors committed by both the case manager and [Appellant's psychiatrist], [Appellant's psychiatrist] had wrongly concluded that the Appellant's paranoid delusional disorder was not caused by the motor vehicle accident.
4. [Appellant's psychiatrist's] opinion on causation had unfortunately been adopted by MPIC and, as a result, MPIC had wrongly rejected the Appellant's claim for benefits in respect of her motor vehicle accident injuries.
5. the Commission should accept his recollection of his discussions with [Appellant's psychiatrist] and the case manager and, as a result, allow the Appellant's appeal.

The Commission noted, upon a review of the documentation filed in the appeal, that both the case manager and [Appellant's psychiatrist] rejected [Appellant's husband's] request to acknowledge that they had erred in interpreting his remarks and both reaffirmed that they had not misinterpreted [Appellant's husband].

[Appellant's husband], in his submission to the Commission, asserted in respect of [Appellant's psychiatrist] and the case manager that:

1. the basis of the allegation of misconduct by them was their economic relationship with MPIC.

2. therefore both of them had a self interest in the conflict between MPIC and the Appellant.
3. as a result, their discussions with him were tainted and their denial of his allegations of misconduct should be rejected by the Commission.

In support of his version of his discussions with the case manager and [Appellant's psychiatrist], [Appellant's husband] referred to a statement of [text deleted], dated September 19, 2002. [Appellant's husband] described this document as an Affidavit, but an examination of this document does not indicate that it was sworn before a Commissioner for Oaths or a Notary Public. An examination of [text deleted's] statement indicated that he knew [Appellant's husband] for twenty-five (25) years, worked with him at [text deleted] and, on several occasions, from July to September 2002, attended at the [text deleted] residence. In his statement [text deleted] described the manner in which the windows of this residence were covered by paint, plastic panels or a pleated shade.

The Commission finds that [text deleted's] statement does not support [Appellant's husband's] specific allegations that the case manager intentionally misinformed [Appellant's psychiatrist] as to her discussion with [Appellant's husband], and/or that [Appellant's psychiatrist] misinterpreted his discussion with [Appellant's husband]. As a result, the Commission finds that [text deleted's] statement does not corroborate [Appellant's husband's] allegations of misconduct against the case manager or [Appellant's psychiatrist].

The only evidence the Commission has received in respect of these allegations is [Appellant's husband's] own statements and there was no other evidence corroborating these allegations. As the husband of the Appellant, who is seeking compensation from MPIC, [Appellant's husband]

was not a disinterested party in the proceedings. In these appeal proceedings [Appellant's husband] acted not only as an extremely passionate advocate on behalf of the Appellant, but also was a witness in respect of his discussions with the case manager and [Appellant's psychiatrist]. [Appellant's husband's] direct self interest in the dispute between the Appellant and MPIC is a significant matter that the Commission is required to consider in weighing the evidence.

[Appellant's husband's] uncontradicted allegations, based on the economic relationship between the case manager, [Appellant's psychiatrist] and MPIC, constitute a serious attack on the character and integrity of the case manager and [Appellant's psychiatrist]. [Appellant's husband] provided no additional evidence that either the case manager or [Appellant's psychiatrist] knew either the Appellant or him prior to their discussions with him, or that either of them had exhibited any hostility or bias to either the Appellant or him prior to such discussions. [Appellant's husband] has not provided any credible evidence to explain why either [Appellant's psychiatrist] or the case manager would have misconducted themselves as he has alleged.

Having regard to [Appellant's husband's] personal interest in the dispute between the Appellant and MPIC, and having regard to the serious and uncorroborated allegations made by [Appellant's husband] against the case manager and [Appellant's psychiatrist], the Commission determines that it cannot give any weight to [Appellant's husband's] allegations of misconduct against the case manager and [Appellant's psychiatrist].

The onus is upon the Appellant to establish, on a balance of probabilities, that the case manager and [Appellant's psychiatrist] intentionally misinterpreted [Appellant's husband's] remarks to them and the Commission finds that, upon weighing all of the evidence, [Appellant's husband]

has not satisfied the burden of proof placed upon the Appellant in these proceedings. As a result, the Commission is unable to determine that either the case manager or [Appellant's psychiatrist] misconducted themselves by misinterpreting any comments [Appellant's husband] made to them and rejects [Appellant's husband's] allegations in this respect.

It should further be noted that [Appellant's psychiatrist], in his medical opinion, stated that if the Appellant's delusions did not predate the motor vehicle accident he still would have concluded that there was no causal connection between the motor vehicle accident and the Appellant's paranoid delusional disorder. The Commission accepts [Appellant's psychiatrist's] position in this respect and notes that [Appellant's psychiatrist's] medical opinion is consistent with the psychological opinion of [Appellant's neuropsychologist], and was corroborated by the psychological opinion of [MPIC's psychologist]. The Commission therefore finds that even if [Appellant's husband's] submission that the case manager and [Appellant's psychiatrist] erred as to the existence of a paranoid delusional disorder prior to the motor vehicle accident, this would not have changed [Appellant's psychiatrist's] opinion in respect of the causal relationship between the motor vehicle accident and the Appellant's delusions.

The Commission further finds that [Appellant's husband] did not provide any credible medical evidence in support of his position that the paranoid delusional disorder was caused by the motor vehicle accident. The Commission determines that, having regard to the Ambulance Report, the case manager's reports, the psychological reports of [Appellant's neuropsychologist] and [MPIC's psychologist], and the medical reports of [Appellant's psychiatrist], the Appellant has not established, on a balance of probabilities, that there was a causal connection between the motor vehicle accident and the Appellant's paranoid delusional disorder, pursuant to Sections 70(1) and 71(1) of the MPIC Act.

Post-Traumatic Stress Disorder

The Commission notes that [Appellant's husband], in his rebuttal in respect of MPIC's position, suddenly changed his position and asserted that the motor vehicle accident did not cause the paranoid delusional disorder but caused the Appellant to suffer from a post-traumatic stress disorder. The Commission further notes that since [Appellant's husband], on behalf of the Appellant, withdrew from this appeal the Appellant's position that the motor vehicle accident had caused the paranoid delusional disorder, the Commission concludes that [Appellant's husband's] allegations as to misconduct by the case manager and [Appellant's psychiatrist] are no longer relevant in this appeal.

[Appellant's husband] refused the Commission's invitation to adjourn the proceedings in order to obtain medical reports to support his position in respect of the causal connection between the motor vehicle accident and the Appellant's post-traumatic stress disorder. In response to this invitation, [Appellant's husband] stated that it would harm the Appellant's health if she was examined by any medical experts and therefore he would be unable to provide such evidence. However, the onus was upon the Appellant to establish, on a balance of probabilities, that there was a causal connection between the motor vehicle accident and the Appellant's post traumatic stress disorder that the Appellant has not met this burden of proof. As a result, the Commission finds that since the Appellant has not provided any credible medical evidence to support her position that the motor vehicle accident caused her to suffer from a post-traumatic stress disorder, pursuant to Sections 70(1) and 71(1) of the MPIC Act, the Commission rejects the Appellant's submission in this respect.

Dated at Winnipeg this 15th day of June, 2007.

MEL MYERS, Q.C.

MARY LYNN BROOKS

DEBORAH STEWART