Manitoba

AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-172

PANEL:	Mr. J. Guy Joubert, Chairperson Mr. Les Marks The Honourable Mr. Wilfred De Graves
APPEARANCES:	The Appellant, [text deleted], was represented by [text deleted] The Respondent, Manitoba Public Insurance Corporation, was represented by Mr. Terry B. Kumka
HEARING DATES	April 20, 2007 and June 20, 2007
ISSUE(S	1. Whether the Appellant is entitled to further funding for general physiotherapy. 2. Whether the Appellant is entitled to further specialized physiotherapy to address a temporomandibular joint condition ("TMJ").
RELEVANT SECTIONS	Sections 136,138,172(1) and 184(1) of *The Manitoba Public Insurance Corporation Act*, R.S.M. 1987, c. P215 ("Act") and Sections 5 and 10(1)(e) of Manitoba Regulation P215 – M.R. 40/94 ("Regulation 40/94")

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

REASONS FOR DECISION

A. BACKGROUND

The Appellant is a [text deleted] year old [text deleted] who was formerly a [text deleted] and [text deleted]. She was involved in three separate motor vehicle accidents on December 4, 1991 ("First MVA"), December 30, 1999 ("Second MVA") and February 11, 2003 ("Third MVA"). The Appellant has always been gainfully employed other than being away from work for short periods of time on the advice of her health care providers as noted below. During the course of the Appellant's involvement with the Personal Injury Protection Plan ("PIPP"), both she and the MPIC have worked collaboratively with the view to assisting her with rehabilitation.

Motor Vehicle Accidents

With respect to the First MVA, the Appellant attended the [text deleted] Clinic where she was seen by [Appellant's doctor #1] who diagnosed her injuries as a cervical strain and lumbar facet joint sprain. Medication and physiotherapy were prescribed. Rather than taking advantage of the benefits offered under the Act and by the PIPP, the Appellant elected instead to file a claim pursuant to *The Workers Compensation Act of Manitoba* ("WCA") given that the First MVA occurred while she was discharging her employment duties.

During the hearing, the Appellant testified that she recovered from the injuries sustained in the First MVA and that this recovery was complete prior to the Second MVA. On the record, there is a letter dated October 19, 1992, addressed to the Appellant from the Benefits Division of the [text deleted], whereby the Appellant was advised by the [text deleted] that it would no longer accept responsibility for any further treatment that she received with respect to the First MVA.

After the Second MVA, the Appellant also attended the [text deleted] Clinic where she was seen by [Appellant's doctor #2] who initially diagnosed her injuries as a strain to the cervical and lumbar spine.

Since the Appellant's symptoms were not resolving as expected, an MRI was performed on June 27, 2001, and it revealed that she had a small herniation of the C6-7 disc with a possible irritation of the left C7 nerve root.

In a subsequent Medical Report dated September 25, 2002, [Appellant's doctor #2] confirmed that:

> [o]n my initial examination the patient complained of pain and stiffness in her neck and both posterior thighs. Examination revealed pain in her lower cervical spine, pain++ in lower lumbar spine and neck, and pain in both thighs [f]unction of her neck and back was normal. No bony abnormality was reported on x-ray of the patient's cervical and lumbosacral spine, however I noted muscle spasm.

As a result of the Second MVA, the Appellant was prescribed medication and physiotherapy, and she was advised to remain off work for several weeks and then return to regular employment duties on a gradual basis.

In her testimony before this Commission, the Appellant advised that with respect to the Second MVA, her lower-back issues subsequently resolved however, the neck issues resolved "only to a certain point".

The Appellant's vehicle sustained damage of $[text deleted] as a result of this collision, and while the damage was minor, accident re-constructionist, [text deleted], reported that:

> [t]he most important question is not "What is the damage to the vehicle?' but rather "What is the acceleration of the vehicle rear-ended?"

He then concluded that there was potential for neck/back injury.

Regarding the Third MVA, the Appellant sustained what she termed as injuries to her lower and mid-back that also resulted in pain to her legs and sometimes her arms. Once again, she attended [text deleted] Clinic where [Appellant's doctor #2] assessed her injuries. He noted that she had a thoracic and lumbar sprain, and aggravated TMJ.

During the hearing, it was noted that the Appellant had received 161 physiotherapy treatments for injuries in connection with the motor vehicle accidents.

For the sake of clarity, it should be noted that the documentary evidence from the MPIC refers to the Second MVA as the “first motor vehicle accident” and the Third MVA as the “second accident” because the Appellant elected to claim and receive benefits under the WCA with respect to the First MVA.

Case Manager Decision Letters

With respect to the Appellant’s neck injury arising from the Second MVA, on April 26, 2002, the MPIC issued a decision letter (the “First Decision Letter”) wherein the Case Manager informed the Appellant that the small C6-7 disc herniation relating to her neck could not be causally related to the Second MVA, and furthermore, the evidence obtained from [Appellant’s doctor #2] had not identified a condition arising from the accident that would justify additional supportive/supervised and on-going pharmaceutical care. As a result of this finding, on June 24, 2002, the Appellant filed an Application for an internal review of the First Decision Letter.

On March 27, 2003, the MPIC issued another decision letter (the “Second Decision Letter”) wherein the Case Manager advised the Appellant that the medical information indicated there was insufficient evidence to support a causal

relationship between the TMJ condition and the Second MVA, and as a result, there would be no entitlement to treatment for the same. As a result of this finding, on May 25, 2003, the Appellant filed an Application for an internal review of the Second Decision Letter.

On June 28, 2005, the MPIC issued a further decision letter (the "Third Decision Letter") wherein the Case Manager advised the Appellant that she was not entitled to coverage for additional physiotherapy sessions for injury arising from the Third MVA because the evidence did not indicate that these were medically required. As a result of this finding, on August 24, 2005, the Appellant filed an Application for an internal review of the Third Decision Letter.

Internal Review of the Decision Letters

On July 8, 2005, the MPIC Internal Review Officer confirmed the First Decision Letter and the Second Decision Letter, and found that the Appellant was not entitled to further funding for general physiotherapy, nor for medication or specialized physiotherapy in order to treat the TMJ condition. In particular, the Internal Review Officer stated that:

> [i]n addition to your two hearings, we have frequently been in contact by e-mail. Accordingly, your two Review files contain an unusual amount of commentary on the issues and the quality of the evidence available to resolve those issues. There is really no point in going through all that material again. It will suffice to point out that your first Application for review, dated June 24, 2002, objects that "[MPIC's doctor #1] has failed to properly consider all the relevant medical treatment history of my injury and condition." You

went on to suggest that the opinion was "premature" on the grounds that "I have been referred to a surgeon and a specialist and have not been examined by the surgeon, and the specialist has not prepared his report."

The second Application for Review, dated May 25, 2003, is very similar. It argues again that the assessment was "premature" and promises to supply "additional medical and treatment reports."

In fact, however, over the three-year history of these two Reviews, you have provided no additional medical information other than the single report from [Appellant's doctor #2] we received May 31, 2005. This provides almost no information that was not already available in [Appellant's doctor #2's] earlier reports. All of the available information has been taken into account in the various opinions provided by our medical consultants, [MPIC's doctor #1], [MPIC's doctor #2], and [MPIC's doctor #3]. Their advice supports the decisions I have to review. I accept that advice. Accordingly, the proper outcome of these Reviews is confirmation of those two decisions.

The TMJ issue deserves a bit more comment. The core issue is causation. There is no dispute that you have a TMJ problem, but there is really no evidence at all supporting your belief that that condition was caused by your first motor vehicle accident. The earliest reference to this condition in the medical material is in a report from [Appellant's prosthodontist] dated July 4, 2002. I accept that it would have shown up a few months earlier than July because your dentist, [Appellant's dentist], had to refer you to [Appellant's prosthodontist], who is a specialist. Nevertheless, that puts the first appearance at more than two years after the motor vehicle accident. I accept [MPIC's doctor #3's] advice that it is impossible to make a casual link given that sort of delay.

This extreme delay in presentation of the TMJ condition is referred to numerous times during the handling of these Reviews. For instance, in an e-mail dated February 20, 2004, I advised you that: "The hiatus between the MVA and the date of [Appellant's prosthodontist's] first report is a major problem re causation. You would be very well advised to get a report from the dentist who referred you to [Appellant's prosthodontist] if she can fill in that gap, or at least most of it." You disregarded that advice. Instead, you attempted to fill in the gap by telling me at the hearing on June 14, 2005, that TMJ symptoms showed up at a dental attendance in September 2000. (Incidentally, I believe the hearing was the first time during the three years these Reviews have been in progress

> that you advanced this suggestion.) I summarized what you told me in my referral memo to [MPIC's doctor #3] dated June 23, 2005, but [MPIC's doctor #3] is not prepared to accept this as evidence that you actually had a TMJ condition in September 2000, or at any time prior to the Spring of 2002 at earliest. Neither am I. You also told me you had undergone at least one more dental examination between September 2000 and the Spring of 2002. If evidence of a TMJ disorder had emerged at either the September 2000 examination, or the next one, then that would be set out in [Appellant's dentist's] records. You have had ample opportunity to provide [Appellant's dentist's] evidence and have not done so. In the circumstances, I am not prepared to accept your evidence on this point.

On September 12, 2005, the MPIC Internal Review Officer confirmed the Third Decision Letter with respect to the refusal to fund further physiotherapy sessions.

The Internal Review Officer stated that:

> [t]his letter is in response to your Application for Review of Injury Claim Decision dated August 24, 2005. By way of background, you are requesting the review of case manager [text deleted] decision of June 29, 2005 [should be June 28, 2005]. That letter advised you that physiotherapy sessions were no longer required to address conditions arising from your motor vehicle accident injuries.
>
> Your Application disputes the decision and advises, "The decision maker has failed to properly consider all relevant information and/or consider relevant information regarding my injury, including but not limited to the fact that I have not recovered fully from my injury."
>
> To adhere to our customer service standards, a hearing was scheduled for October 13, 2005. On September 2, 2005, you called and advised the hearing date was in conflict with your schedule and, therefore, the hearing was cancelled.
>
> I have now had the opportunity to review the information on your file, including two previous Internal Review Applications [text deleted], both of which were addressed in [text deleted] Review Decision of July 8, 2005.
>
> I will detail the relevant points:

1. The decision letter sent to you by your case manager, dated June 29, 2005, appears to have been sent in error. Although the decision letter in essence, provides the same conclusion as [text deleted] Review Decision which followed approximately nine days later, the fact remains that the case manager exceeded his jurisdiction in issuing the decision letter dated June 29, 2005 [should be June 28, 2005].

2. The most recent physiotherapy report on your file is dated June 7, 2005, and was provided by [text deleted], physiotherapist. That report was taken into consideration when Mr. Strutt's decision was rendered on July 8, 2005.

   [Appellant's physiotherapist #1's] report does not make any recommendations for your continued in-clinic physiotherapy treatment. The physiotherapist documents your subjective complaints including neck pain, paraesthesia into left forearm and hand limitation of movement.

3. The Internal Review decision issued by [text deleted], dated July 8, 2005, addressed both accident dates of December 30, 1999 and February 11, 2003. The review of [text deleted] dealt with physiotherapy treatment, the second review, [text deleted], specifically dealt with physiotherapy relating to your TMJ condition. Both reviews were addressed in the Review Decision of July 8, 2005.

   The resulting Review Decision states, "This Review has confirmed the decisions of April 26, 2002 and March 28, 2003 [should be March 27, 2003]. You are not entitled to further funding for general physiotherapy, nor for medication, nor for specialized physiotherapy to address your temporomandibular joint ("TMJ") condition. You have a right of appeal from this Review decision as explained at the end of this letter."

4. The Internal Review decision of July 8, 2005, clearly addresses funding for general physiotherapy and takes into account all the medical information on both of your claim files.

> To assist in clarifying your position, you faxed a three-page document to the Internal Review Office on September 2, 2005. In this document, you provided a brief highlight of the chronological history of events which date back to your first motor vehicle accident of December 30, 1999. To summarize, you advise that following your first accident, you attended for physiotherapy as it related to your cervical and temporomandibular joint ("TMJ") condition. Following the second accident of February 11, 2003, you required physiotherapy addressing lower back symptoms. You write that Manitoba Public Insurance continued to support physiotherapy for the lower back as a result of the second accident, after the support for the physiotherapy treatment on the TMJ and neck was discontinued. Of note, the physiotherapist's report of June 7, 2005 does not support your statement that treatment was addressing your lower back symptoms only.
>
> The Internal Review decision of July 8, 2005 supercedes the decision you requested for review. Therefore, your hearing will not be rescheduled and my Internal Review file is being closed at this time. As advised previously by [text deleted], if you choose, you may exercise your right to appeal the Internal Review decision dated July 8, 2005.

Reviews of Claims

The progress of the Appellant's case with respect to her claims has been protracted to say the least. A synopsis of the context of the reviews with respect to the Appellant's claims with the MPIC can be found in the MPIC Internal Review Officer's Decision Letter dated July 8, 2005 as follows:

> [t]he progress of these Reviews has been unusually protracted, and also unusually involved. All of these steps are documented on the Review files. The following brief summary is provided only for purposes of providing context.
>
> The [text deleted] Review was assigned to me on July 4, 2002. I set the hearing you requested for July 25, 2002. It was rescheduled twice, at your request, and the hearing took place on October 31, 2002.

> As it turned out, this was merely the first installment of the hearing. You expressed a belief that the severity of the impact in the December 30, 1999 accident, and your consequential injuries, were being unjustly minimized due to the relatively slight damage to your automobile. I documented your concerns and on November 4, 2002 returned your file to our medical consultants for further consideration.
>
> There was some confusion at this point. The decision under Review had terminated your entitlement to physiotherapy, but in mid-January 2003, I discovered that your case manager had nevertheless authorized physiotherapy for your TMJ condition. In mid-March 2003, I received a report from one of our consultants, [MPIC's doctor #3], but internal evidence made it appear possible that [MPIC's doctor #3] had not had access to the whole file when preparing this report. In April 2003, following further discussions, the case manager's supervisor indicated he would respond to your concerns by having an accident reconstructionist review the circumstances of your collision. For reasons documented on the file, the reconstructionist's report did not become available until the last half of November 2003.
>
> In the meantime, on March 28, 2003, your case manager issued a decision ending your entitlement to funding for physiotherapy for your TMJ condition. This generated Review [text deleted]. We did make an effort to arrange a hearing in November and December 2003. We deferred the hearing, however, because the case manager had again referred the file to Health Care Services. [MPIC's doctor #3] provided a further report in January 2004. There followed a number of adjournments to give you time to obtain further medical information. You had initially indicated that we would have a report from [Appellant's doctor #2] by late April 2004. In fact, however, that report did not materialize until late May 2005.
>
> On June 14, 2005, we completed the hearing on Reviews 02-321 and 03-328. I then referred the file to [MPIC's doctor #3] for one last look. You already have a copy of my memorandum of referral to [MPIC's doctor #3]. A copy of his report of June 24, 2005, is attached.

Pursuant to Section 172(1) of the Act, on September 30, 2005, the Appellant filed a Notice of Appeal with this Commission wherein the Appellant appealed the

decisions of the MPIC Internal Review Officers stating that “I disagree with these decisions”.

B. RELEVANT SECTIONS OF THE ACT AND REGULATIONS

The Act

> 136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:
>
> (a) medical and paramedical care, including transportation and lodging for the purpose of receiving care;
>
> 138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.
>
> 172(1) A claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.
>
> 184(1) After conducting a hearing, the commission may
>
> (a) confirm, vary or rescind the review decision; or
> (b) make any decision that the corporation could have made.

Regulation 40/94

> 5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:
>
> (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;
>
> 10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:
>
> (e) funds for occupational, educational, or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

C. THE POSITION OF THE PARTIES

The Appellant

In essence, the Appellant's position is that her injuries are causally connected to the motor vehicle accidents and that she is entitled to reimbursement of medical and paramedical care under Section 136(1) of the Act and Section 5 of Regulation 40/94 because the same are medically required.

In a written submission to the Commission, the Appellant stated with respect to Section 5 of Regulation 40/94 that:

> There are two conditions which must be met before MPI becomes obligated to reimburse a claimant for expenses incurred for medical or paramedical care:
>
> 1. the expenses must have been incurred for treatments directed towards an injury sustained in the accident in accordance with Section 136(1)(a) of the Act; and
>
> 2. the treatment must have been "medically required" in accordance with Section 5 of Manitoba Regulation MR P215-40/94.
>
> A review of AICAC decisions concerning the application of s. 5 shows that for treatments to be considered medically required there must be a diagnosis of a bodily injury sustained in a mva, and the medical treatment should result in sustained therapeutic benefit to the injury resulting in either full recovery or a victim reaching maximum therapeutic benefit.

In other words, the Appellant argues that all of her injuries were sustained as a result of the motor vehicle accidents and that the resulting expenses for treatment are medically required in the sense that she has not yet attained full recovery or reached the maximum therapeutic benefit.

The Appellant also relies on Section 138 of the Act and Section 10(1)(e) of Regulation 40/94. Section 138 provides discretion to the MPIC subject to the regulations, to take any measure it considers necessary or advisable in order to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labor market. Section 10(1)(e) of Regulation 40/94

contemplates in part funds for occupational, educational or vocational rehabilitation that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

In support of the Appellant's position, she relies in part upon decisions of the Manitoba Court of Appeal in *Menzies v. MPIC et al*, 2005 MBCA 97 and of the Commission in [text deleted] AC – 04 -8 – [2005] M.A.C.A.C.D. No. 35.

The MPIC

Briefly, the MPIC's position is that the Appellant's injuries are not causally related to the accidents and if they were, the expenses sought by the Appellant with respect to physiotherapy treatments are not medically required under Section 136 of the Act and Section 5 of Regulation 40/94.

With respect to the Appellant's reliance on Section 138 of the Act and Section 10(1)(e) of Regulation 40/94, the MPIC argues that the Appellant cannot rely on this Section when provision is made elsewhere (Section 136) of the Act for the reimbursement of expenses. Counsel for the MPIC directed the Commission to two recent Manitoba Court of Appeal decisions of *Pelchat v. Manitoba Public Insurance Corporation*, 2007 MBC 52 and *Dupuis v. Manitoba Public Insurance Corporation*, 2007 MBCA 53 which he indicated brought further clarification to the application of Section 138.

D. DECISION – ISSUES UNDER APPEAL

1. Whether the Appellant is entitled to further funding for general physiotherapy?

On a balance of probabilities, this Commission finds that there is a causal connection between the Appellant's back and neck injuries and the Second MVA and Third MVA. However, we are of the view that the Appellant is not entitled to further funding for general physiotherapy pursuant to Section 136 of the Act and Section 5 of Regulation 40/94 because she has reached a point in the treatment of her injuries where further physiotherapy intervention is not medically required. In other words, the Appellant has reached a plateau or maximum therapeutic benefit from these treatments.

In this regard, we accept the evidence of the MPIC Medical Officer, [MPIC's doctor #3], in a Medical Report dated January 5, 2004. In that Medical Report, [MPIC's doctor #3] addressed the question of whether the Appellant's treatment regime and frequency were medically required with respect to the Second MVA and Third MVA. On page two of the Medical Report, [MPIC's doctor #3] stated that:

> With regard to the question regarding the patient's current treatment regime, and treatment frequency, it appears as if the most recent reports from [Appellant's physiotherapist #1], indicate that he would treat the patient for six to eight weeks from February 2003 for her thoracolumbar and lumbosacral sprains. He describes the treatment as involving numerous exercises, as well as some manual therapy two times per week. Given the patient's previous difficulty with her health, this treatment frequency does not appear

> unreasonable. It should be concluded by now, given [Appellant's physiotherapist #1's] report.

This Commission is also of the view that the Appellant cannot rely on Section 138 of the Act, together with Section 10(1)(e) of Regulation 40/94 since Section 136(1)(a) of the Act and Section 5 of Regulation 40/94 already constitute a payment regime for the reimbursement of the same expenses. The broad power of Section 138 cannot be invoked to obtain additional reimbursement for these expenses. Authority for this proposition is found in *Menzies* upon which the Appellant also relies, but apparently for different reasons.

In *Menzies*, the Manitoba Court of Appeal considered the payment regime under Section 137 and accompanying regulations, and whether Section 138 could be used for additional reimbursement. Freedman, J. stated at page 11 (with respect to Section 137) that:

> [t]ogether these provisions constitute a payment regime covering expenses of a person accompanying a victim when that person obtains care. Section 138 could not be the means by which further or greater such expenses could be reimbursed.

On the basis of the above, and for different reasons than those outlined by the MPIC, we find that the Appellant is not entitled to further funding for general physiotherapy treatments. Pursuant to the authority vested in this Commission under Section 184(1)(a) of the Act, we confirm the Internal Review Officer's decision dated July 8, 2005, with respect to this issue.

2. Whether the Appellant is entitled to further specialized physiotherapy to address a temporomandibular joint condition?

This Commission finds that the MPIC did not err in denying the Appellant further specialized physiotherapy to address the TMJ condition. On a balance of probabilities, we fail to see how the TMJ condition can be causally connected to the Second MVA and the Third MVA.

The evidence of the Appellant was that she wore a dental appliance prior to the First MVA. At that time, the Appellant was a [text deleted] and she noticed that her jaw felt somewhat loose. The appliance was made by her dentist, [Appellant's dentist], and the Appellant wore this device every so often and especially at night. In the Appellant's own words, the appliance "fixed the problem" and she had not worn it for two to three years prior to the Second MVA. It is unclear whether this appliance was used to treat a TMJ condition at the time.

With respect to the Second MVA, the first notation in the medical records before this Commission that mentions the Appellant's TMJ complaint was not made until July 4, 2002 … some two years after the Second MVA. These medical records belong to [text deleted], a prosthodontist, who wrote that the Appellant had a "severe whiplash style injury, including cervical disc damage & increased damage to TM Joints". This first notation of the TMJ condition on July 4, 2002, represents a significant gap in time from the Second MVA and, in our opinion, is extremely damaging to the Appellant's position.

In addition to the above, the Appellant had an opportunity to tender evidence from her dentist which would likely have shed some light on the TMJ issue however, she declined to do so. On cross-examination and asked why she had not tendered evidence from her dentist, the Appellant stated that she "went with [Appellant's prosthodontist's] evidence over [Appellant's dentist] because she felt it was superior".

Because of the timing of the references to the TMJ condition in the medical records, [Appellant's prosthodontist's] evidence does not assist in firmly establishing a causal connection with the Second MVA. Even the Appellant's family physician, with whom she has been a regular patient since 1991, does not record the TMJ condition contemporaneously with the injury. In a letter dated August 28, 2002, [Appellant's doctor] stated that:

> Your chart indicates, during a complete physical exam in April, 1992, you made us aware that you were attending [text deleted] Clinic for a whiplash injury secondary to a motor vehicle accident. You have since informed me that that injury had completely resolved. Indeed, I do not see any other references to subsequent visits for neck pain. In January, 2000, you called our clinic to let us know that you had been in a car accident on December 30, 1999 and had seen [Appellant's doctor #2] at the [text deleted] Clinic. During another complete physical exam in October, 2000, you elaborated on your motor vehicle accident in 1999 and the ensuing neck injury and treatment.

[Appellant's doctor's] letter does not refer to the TMJ condition other than with respect to having received copies of the medical report from [Appellant's prosthodontist].

The Appellant is an articulate individual who is legally trained. In the Commission's assessment, had there been any issues with her jaw contemporaneous with the Second MVA, she would have raised the issue with a care giver and the same would likely have been noted in the medical records. While [Appellant's prosthodontist] stated in his testimony that a delay in presentation of symptoms is not unusual, again on a balance of probabilities, we are nonetheless of the view that there cannot be a causal connection.

We accept the evidence of the MPIC Medical Officer, [MPIC's doctor #3], who stated in a medical report dated January 5, 2004, and confirmed on June 24, 2005 that:

> I have reviewed the medical information on the file subsequent to the December 30, 1999 collision. I cannot identify evidence of temporomandibular joint symptoms, or findings up until the assessment of [Appellant's physiotherapist #2] [text deleted] on August 8, 2002. This is approximately thirty-two months after the collision in question. During the time the patient had multiple health care visits. Therefore, to summarize my opinion, the temporomandibular joint difficulties are not probably related to the collision of December 30, 1999. It is obvious that the temporomandibular joint difficulties were documented prior to the collision of February 11, 2003.

With respect to the Third MVA, this Commission finds, on a balance of probabilities, that the Appellant suffered an exacerbation of a pre-existing TMJ condition, and that any further specialized physiotherapy treatment for the same is no longer medically required. In this regard, we accept the evidence of [MPIC's doctor #3] who opined on page two of his Medical report dated January 5, 2004:

> Based on the evidence on file, it would be appropriate to consider that the patient sustained an exacerbation of pre-existing temporomandibular joint difficulties and attend for care for this purpose. The anticipated duration of in-clinic care has subsequently expired. The care should be concluded at this point.

For reasons outlined previously, the Appellant cannot in the alternative invoke Section 138 and accompanying regulations in order to cover expenses pertaining to the specialized physiotherapy to address the TMJ condition.

Pursuant to the authority vested in this Commission under Section 184(1)(a) of the Act, we confirm the Internal Review Officer's Decision dated July 8, 2005, with respect to this issue.

Dated on September 21, 2007.

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J. Guy Joubert

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Honourable Wilfred De Graves

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Les Marks