Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-101

PANEL:	**Ms Laura Diamond, Chairperson** **Ms Leona Barrett** **Mr. Wilf DeGraves**
APPEARANCES:	**The Appellant, [text deleted], was represented by Ms Nicole Napoleone;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.**
HEARING DATES:	**August 24 and 25, 2010**
ISSUE(S):	**Entitlement to reinstatement of Personal Injury Protection Plan Benefits.**
RELEVANT SECTIONS:	**Sections 110(1)(a), 149, 160 of The Manitoba Public Insurance Corporation Act ('MPIC Act')**

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant was injured in a motor vehicle accident on May 6, 2001. As a result of injuries sustained in the motor vehicle accident, he was in receipt of Personal Injury Protection Plan ("PIPP") benefits including Income Replacement Indemnity ("IRI") benefits.

On March 7, 2005, the Appellant's case manager wrote to him advising of the termination of his benefits. She indicated that in a meeting on November 4, 2004, the Appellant had provided her with a statement advising that his left ankle injury prevented him from consistently weight

bearing and maintaining a stable balance and that his low back pain prevented him from lifting anything heavier than 15 pounds. He had also indicated that while he could drive, he could only tolerate driving short distances.

The case manager advised that subsequent investigation had revealed that he had misrepresented the extent of his injuries and knowingly provided MPIC with false information contrary to Section 160(a) of the MPIC Act. She referred to investigations which showed him operating a motor vehicle, walking without discomfort, carrying and assisting his children in and out of vehicles and assisting his wife with her wheelchair. The case manager stated that:

> "All these movements were observed to be performed smoothly and without any signs of the discomfort and limitations which would be expected from someone with the injuries and physical limitations you state you suffer from."

Following medical review, the case manager concluded that the Appellant's injuries and functional capabilities were at odds with his statements and that there was no apparent impairment of function which would prevent him from returning to work. Accordingly, pursuant to Section 160(a) of the MPIC Act and Section 110(1), under which a victim ceases to be entitled to IRI when he is able to hold the employment that he held at the time of the accident, the Appellant's entitlement to all benefits would end as of February 21, 2005.

The Appellant sought an Internal Review of this decision. On April 28, 2005, an Internal Review Officer for MPIC reviewed the Appellant's file, including videotaped evidence showing him performing a variety of activities of daily living, and medical and other reports on the file. The Internal Review officer upheld the decision of the Appellant's case manager. It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He described his current status as the father of five children, with a disabled wife, working at [text deleted].

He described the motor vehicle accident and his injuries to his knee and ankles.

The Appellant described the meeting with his case manager on November 4, 2004 at his residence. He had been under the impression that the purpose of that meeting was to put into motion a back to work retraining or rehabilitation program which he had been seeking from MPIC. He also indicated that he thought that the meeting was a way to get back in touch with his case manager who had been away, with the case laying almost idle for approximately five months. During that time he had been seeing [Appellant's Doctor #1] and [Appellant's Doctor #2], who had advised him to become more active and involved in family activities and work, in spite of his pain.

He testified that he described his situation for the case manager who wrote out what he was capable of doing and what he thought he could do for rehabilitation. He described what he thought he could do in a general way, approximating the amounts that he might be able to lift etc. He testified that he was just guessing, since he thought this was a general meeting where he was trying to get to know his case manager and prepare for a retraining program.

The Appellant also described his contact with [Appellant's Doctor #2] who recommended that he try and work through his pain and become more active, while continuing to use some pain

killers. He participated in physiotherapy and chiropractic treatment and had sought funding for aqua-exercise therapy, which MPIC had denied.

The Appellant also described his participation in family activities, so that he could assist his wife with the children and home duties. He testified that the family planned to carry out some of these activities on what the Appellant described as his "good days". As a result, he would sometimes spend time in a hot tub at home to relax the spasms in his back that resulted. He also continued to use over the counter pain killers.

The Appellant described the time depicted in videotapes provided by the surveillance investigation from MPIC. He noted that these days were close to Christmas and occurred on what were fairly decent days for him "pain-wise". He indicated that usually the family's Christmas shopping was done in October, but these days were close to Christmas and the family was going shopping to try and prepare for Christmas and take advantage of some sales. He emphasized that the videotapes did not depict a typical day.

He described the method that he used to help his spouse transfer between her wheelchair and their vehicle. This method was also demonstrated for the panel and the Appellant explained that he had been educated on this method so that he could assist her with the transfer without taking on her full weight, as she was able to assist, using a rocking back and forth technique and by using her arms to help transfer her weight.

The Appellant described the jobs that he had done in the past and also the pain which he continued to suffer in his knee, ankles, lower back and right side. He explained that one of his previous jobs, at [text deleted] delivering parts, required him to do a lot of walking and to pick

up and carry heavy objects for delivery, which he could not do after the accident, because of the knee surgery and ankle surgery he had undergone, as well as spasms in his back.

He noted that the same restrictions prevented him from doing his other job, collecting and moving shopping carts for [text deleted]. He testified that this job required strength in his legs to move the carts up and down off a trailer. He also noted that assisting his wife and children did not compare to the strength and endurance required to drive a truck and move [text deleted] parts and carts all day long.

On cross-examination the Appellant was asked about the statement he signed for his case manager on November 4, 2004, which MPIC had found contradicted his abilities. The Appellant indicated that he had tried to be truthful and accurate in reporting his injuries, but that in this informal interview in his home, he had, on some occasions attempted to guess at the amount he could lift and tried to give a general assessment of his abilities. He indicated that since a lot of the activities he undertook involved family responsibilities with his wife and children, he was able to modify the activities, for example by leaning on a shopping cart while pushing it around a grocery store, or saving activities for days when he was feeling stronger, but that he was still not capable of working in parts delivery and with the shopping carts.

The Appellant's wife also testified at the hearing. She described the stress and changes which the family underwent while trying to adapt to the result of the Appellant's motor vehicle accident injuries.

She indicated that she had requested the meeting with the case manager on November 4, 2004, because they had not had any contact with anybody at MPIC for a lengthy period of five to six

months, although they had been calling periodically and had been reimbursed for cost requests submitted.

She described the meeting, which she understood was for the purposes of having the case manager become re-acquainted with their case.

She explained that the case manager then wrote up the statement which she understood was for the purpose of the case manager having records to refer back to, as she had not been working on the case for some time. The case manager had asked her to sign it, which she understood was customary. She indicated that she had assisted with the answers based on their experience, although some of the numbers (for example the weight of her son listed on the document) were "guesstimates".

The Appellant's wife also indicated that she had watched the videotapes of the investigative surveillance. She described how the family had changed the way they operated since the motor vehicle accident, scheduling their lives so that the Appellant did not have a lot of demands on him prior to days when she had shopping or other necessary excursions planned. She indicated that she orchestrated trying to do as much as she could when the Appellant was feeling well, and that he used over the counter medication to "get out in front of the pain" on such days. The Appellant would take breaks while they were doing these tasks, leaving her to manage shopping and other duties, perhaps with the assistance of store staff. The Appellant also explained in detail the technique which had been taught to her and her husband so that he could assist with transferring her between the wheelchair and their vehicle in a way that allowed her to bear as much weight as she could by herself, particularly with her upper body, and minimize stress on the Appellant.

The panel also heard testimony from [Independent Occupational Therapist]. She had conducted a review of the file and provided an opinion. [Independent Occupational Therapist] had reviewed the surveillance tapes and medical and other documentation on the Appellant's file. She did not examine or speak to the Appellant.

[Independent Occupational Therapist] testified that based on her observations of the Appellant assisting his wife with transferring between her wheelchair and vehicle, it was not her opinion that the surveillance tapes demonstrated he was capable of lifting approximately 100 pounds. In her view, the usual work capacity is based on a floor to waist lift, and the surveillance tape showed a more basic chest to shoulder lift, which was significantly easier. The Appellant was able to keep the weight close to his body with that lift, reducing the weight required to lift. The Appellant had not performed a floor to waist lift, which is usually more stressful on the ankle joint. The Appellant's wife was able to provide significant assistance with the lift on the tape, and although her ability may wax and wane, she demonstrated some ability to perform the transfer on her own, making [Independent Occupational Therapist] believe she was able to provide significant assistance. [Independent Occupational Therapist] described a true 100 pound lift as crouching, picking his wife up, and assuming a standing position with her entire weight, without her being able to assist in any way. This was not seen on the videotapes.

When asked what the Appellant's current functional capacities might be, [Independent Occupational Therapist] indicated that the last document she had been able to review was from 2005, and that nothing had been provided after that.

When asked about [MPIC's Doctor #1's] opinion in January 2005 that the Appellant would be capable of participating in a gradual return to work program, [Independent Occupational

Therapist] indicated that any gradual return to work is an attempt based on initial status. Such a recommendation would mean that the individual is not recommended to return to work full-time, and not considered able to hold such employment. However, he can safely attempt a return to some duties. These, when done correctly, would be monitored by a team effort, with the case manager and employer. If the Appellant feels he would like to return to work, she did not think there was any reason to stand in the way of that and believed that a gradual return to work could be attempted, although she could not comment on whether it would be probable to succeed or not.

[Independent Occupational Therapist] indicated that in reviewing the tapes, the Appellant appeared to be quite high functioning in terms of family responsibilities and had likely had significant training in terms of the safest and easiest ways to participate most efficiently in the activities shown on the tapes. However, she could not comment upon what his function was all the time and noted that his ability to perform instrumental activities of daily living does not extrapolate to being able to work at the hours and duties he was capable of performing prior to the motor vehicle accident and his injuries.

[Independent Occupational Therapist] noted that there was some conflicting information in that the surveillance did not substantiate that the Appellant was able to lift half of the 45 kilograms indicated in the Physical Demands Analysis. That report also had certain omissions, such as the maximum lift weight, and a disregard for the job requirement to lift at least 50 pounds, which, although the requirement was noted as "rare", still appeared in the description of required tasks.

Counsel for the Appellant reviewed the MPIC documentation on the Appellant's file. She submitted that, based upon documentation filed in the past by the Appellant, MPIC was fully

aware that he had been active in helping to transfer his wife since 2002. This should not have come as a surprise to MPIC when viewing the surveillance videotapes.

Counsel also noted the failure of MPIC to pursue plans for facilitating the Appellant's return to modified work or rehabilitation. She noted [Appellant's Doctor #2's] support for a gradual return to work program, and notes taken by a case manager regarding a conversation with the Appellant's former employer at [text deleted], who stated that he would be willing to make accommodations and modify any [text deleted] job in order to arrange a return to work for the Appellant.

Counsel also pointed to [Appellant's Doctor #1's] recommendation that the Appellant participate in a return to work trial, with some lifting restrictions.

Instead, the Appellant's case manager terminated benefits, just when the family had been hoping for a team effort, with them as willing participants and with the Appellant's workplace manager on board, to attempt a gradual return to work.

Counsel also noted that the case manager, during the meeting of November 4, 2004, did not inform the Appellant that she was there for the purpose of finding out his current functional capacity. She had indicated that she was going to obtain medical authorizations and write to [Appellant's Doctor #2] to inquire regarding his return to work recommendations, and there was discussion regarding obtaining the services of a vocational rehabilitation consultant. This gave the Appellant the impression that a return to work program might be implemented. These impressions are confirmed in the case manager's notes to the file.

Counsel also noted the opinions of [Employees' Benefits Board's Doctor], of the Employees' Benefits Board, that the Appellant was not able to sustain a return to work, although he wanted to. She had reviewed the job description for the [text deleted] job and the surveillance videos but was still of the opinion, having known the Appellant since 1993, that he was not able to do this job.

Counsel reviewed the medical evidence from [Appellant's Doctor #2] and [Appellant's Doctor #1] in detail. She indicated that the Appellant was eager to attempt a gradual return to work plan but had not received support in this from MPIC, and that in fact, there had been a lengthy delay in case management of his case.

She submitted that the Appellant, while waiting for MPIC to take action on his rehabilitation, had to attend to the essentials of daily living for his family. His ability to participate in these activities did not indicate that he was able to perform all the requirements of his occupation at that time, and did not amount to a misleading of the case manager during the meeting of November 4, 2004.

Counsel requested that the Commission find that MPIC erred when terminating the Appellant's PIPP benefits. She requested that the Commission reinstate the Appellant's PIPP benefits (including his IRI top-up) and retain jurisdiction on the issue of the reinstatement of these benefits.

Evidence and Submission for MPIC:

The panel heard evidence from [MPIC's Doctor #1], a specialist in Sports Medicine and the musculo-skeletal system. [MPIC's Doctor #1] also has extensive experience reviewing complex insurance cases to determine issues relating to functional ability.

[MPIC's Doctor #1] reviewed the surveillance tapes in her capacity as a consultant to MPIC's Health Care Services Team and provided reports for the Appellant's file regarding her opinion as to the level of function demonstrated by the tapes and whether that level of function indicated a likelihood that the Appellant could return to his previous employment at two jobs.

[MPIC's Doctor #1] reviewed the injuries suffered by the Appellant in the motor vehicle accident as well as reports from [MPIC's Doctor #2], [Appellant's Doctor #2] and [Appellant's Doctor #1]. She noted that it seemed reasonable to her that the Appellant could envision a more active lifestyle following his recovery from the accident. She indicated that for such musculo-skeletal injuries, one would expect a dramatic improvement within the first few weeks or months of tissue healing, which would then gradually plateau. By the end of one year there would not be as much tendon, bone or muscle healing, but rather a concerted effort by physiotherapists to work on flexibility and strength of tissue, in order to re-establish actual ability to use the joint in real life situations. After about a year, things would start to level off. Where pain was an issue, she indicated a patient should try to become more active and participate in conditioning.

[MPIC's Doctor #1] indicated that she had watched the surveillance tapes to get a general flavour of what the Appellant could do and with what ease he was able to do it. She looked for whether he had to alter his way of doing something and whether his movements were fluid, etc. She noted that surveillance is not a functional capacity evaluation, but does give some idea of

what a person is actually capable of doing, and some information on how long and how much they can carry out.

[MPIC's Doctor #1] viewed portions of the surveillance tapes with the panel and commented upon them. She noted that the Appellant's function did not seem to have to be altered or modified. Although she considered that the Appellant's wife was not a dead weight and that she assisted with lifts, she did not see that issue as the determining factor as to whether the Appellant could go back to work. From watching the tapes, she indicated she could not pick out that there were any ankle and knee problems. She believed that the Appellant could progress towards working full-time hours and work duties. She did not see any visual indications of distress in the videotapes on the part of the Appellant and concluded that returning to his job was an achievable goal.

Counsel for MPIC submitted that the Appellant's job as a [text deleted] truck driver did not require him to carry very heavy packages; the driver carries smaller or lighter parts and uses a two-wheel dolly to transport larger or heavier parts as needed. She also noted that his job with [text deleted] involved driving a half-ton truck for 80% of the time to various locations in the City.

Counsel also reviewed the Appellant's application for compensation, and contrasted that with the statement taken by the case manager on November 4, 2004 and the Appellant's statements in evidence at the hearing. She noted that it was clear from the video surveillance that the Appellant was able to lift his wife's complete wheelchair, which weighed 18 pounds. The statement had described an individual with severe limitations and an inability to work and participate in many family activities. This was simply not what was observed on the videotapes.

Although the Appellant complained of having no active case manager for five months, the Appellant was requesting reimbursement for financial expenditures and was receiving payment from MPIC during that time. He still had contact with MPIC and could have sent a letter before or after November 2004 advising of changes in his condition. He did not do so.

Counsel for MPIC also reviewed the written reports of the investigator who conducted the surveillance as well as the portions of the videotapes reviewed at the hearing. The panel had viewed these tapes and heard [MPIC's Doctor #1's] opinion that she did not see any deterioration in his condition through the course of the day or discomfort in his positioning, even when stooping or in other stressful positions for the back.

The Appellant had demonstrated that he was able to lift and that he was able to push shopping carts.

This surveillance was taken 3½ years after the motor vehicle accident and one year after his surgeries. The Appellant had improved and had failed in his obligation under Section 149 of the MPIC Act to advise MPIC of a change in his condition.

She submitted that the evidence unequivocally supported his ability to do both of his pre-motor vehicle accident employments. According to [MPIC's Doctor #1], there was no pathology that would prevent a return to work and no evident limitations in his abilities. Accordingly, counsel submitted that the decision of the Internal Review Officer should be upheld.

Discussion:

The relevant Sections of the MPIC Act provide:

Events that end entitlement to I.R.I.

110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(a) the victim is able to hold the employment that he or she held at the time of the accident;

Claimant to advise of change in situation

149 A person who applies to the corporation for compensation shall notify the corporation without delay of any change in his or her situation that affects, or might affect, his or her right to an indemnity or the amount of the indemnity.

Corporation may refuse or terminate compensation

160 The corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person

(a) knowingly provides false or inaccurate information to the corporation;

The panel has reviewed the evidence on file as well as the evidence of the Appellant, his wife, [Independent Occupational Therapist] and [MPIC's Doctor #1]. We have also reviewed the submissions of counsel.

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officer was incorrect in terminating his PIPP benefits for providing false or inaccurate information to MPIC and for terminating his IRI benefits because he was able to hold the employment that he held at the time of the accident.

Counsel for MPIC argued that the Appellant had an obligation under Section 149 to advise MPIC of a change in status and that he had not been honest in reporting changes in his condition between the time of his Application for Compensation and his statement to his case manager in November of 2004.

MPIC alleges that the Appellant was fraudulent in failing to report improvement and in inaccurately reporting his symptoms and functional abilities, when these are compared with surveillance tapes prepared by the investigators.

The panel finds that the Appellant was not fraudulent and did not misrepresent his functional abilities.

MPIC's position is hinged on the Appellant's statements that:

- He was unable to work in any position or drive his wife and children around.
- His left ankle injury would not consistently allow him to weight bear and maintain his balance.
- He was not able to lift 15 pounds (although his son weighed 20 pounds and he was able to lift him).
- He was presently unable to go back to either of the jobs he held prior to the motor vehicle accident.

The panel recognizes that the Appellant was under a misconception about the purpose of the statement given on November 4, 2004 and the importance of being precise in the accuracy of his and his wife's answers. Both the Appellant and his wife testified in this regard.

In addition, the panel believes that MPIC's position relies upon portions of that statement taken out of context without regard to the full context of what was reported and said at the meeting.

For example, the Appellant had stated that he was unable to work or drive *in the past tense*, and did not claim a current inability to drive. The Appellant had noted that he was not able to consistently weight bear, but had not claimed that he was not able to weight bear at all. He indicated that when he lifted his son the wrong way he would have a stabbing pain in his back, but had not claimed that he could not or did not ever lift his son. Both the Appellant and his wife testified that they had guessed when estimating whether he was able to lift 15 or 20 pounds. In addition, the statement noted that the Appellant's right ankle and knee had improved and that he was able to drive short distances. This was confirmed in his testimony before the panel. The interview and the statement, the panel finds, would not carry the weight of a formal functional capacity evaluation. Rather, they are casual and approximate reflections of the Appellant's assessment of his condition.

As noted by counsel for the Appellant, the panel accepts that MPIC had known for some time that the Appellant was able to participate in helping to transfer his wife.

The videotape evidence, the panel notes, shows drives for only short distances. For example, in video surveillance from December 15, over a three hour period, the Appellant was behind the wheel for short drives and is in and out of the vehicle during that time period. This is consistent with [Appellant's Doctor #2's] recommendations as to what he should try to perform.

Due to the quality of the videotapes and the lack of unobstructed proximity between the camera operator and the Appellant, his vehicle and his family, the panel was not able to see the Appellant's full reactions, in terms of pain or fatigue, which resulted from his activities during the videotape surveillance. Nor was the panel able to fully view the Appellant's lower body and feet while he assisted with transfers of his wife and children in and out of the vehicle.

However, the panel did have the benefit of hearing the testimony of both the Appellant and his wife, who described the method they used to effect transfers between the wheelchair and the van, attempting to maximize the amount of assistance and independent weight bearing by the Appellant's wife during the transfer.

Having viewed the videotapes, we find that the procedure that they described was consistent with the tapes.

The Appellant and his wife also gave evidence about how they coordinate and manage their responsibilities by doing errands together on good days, when the Appellant might be feeling well. They testified that the videotape was not typical of their daily routine.

The panel notes the tapes do not show the Appellant engaging in strenuous activities or work. Rather, they show the Appellant and his family engaging in some activities of daily living, during three particular days during the pre-Christmas season. Both testified to the use of pain killers for the Appellant to accomplish these activities. [MPIC's Doctor #1] testified that she did not see the Appellant suffering from stress during these activities, but she was not asked to comment upon the possible effect the use of pain killers might have in this regard. The Appellant's testimony at the hearing confirmed that he uses pain killers to assist him in completing these activities. The Appellant also testified that when he engaged in a lot of these activities it caused him pain so that he would go home and soak in a bathtub to attempt to relieve it.

The panel finds that in order to conclude that the Appellant had knowingly provided false or inaccurate information to the Corporation, it would require clearer evidence than what we were

able to see on the videotapes to establish this. As a result, the panel finds that the Internal Review Officer was not correct in his finding that the Appellant had knowingly provided false or inaccurate information to the Corporation and that as a result the Corporation was entitled to refuse or terminate his PIPP benefits.

In regard to the Appellant's ability to hold employment pursuant to Section 110(1)(a), the panel has reviewed the evidence of the Appellant's caregivers. All of these caregivers, including [Appellant's Doctor #2], [Appellant's Doctor #1] and [text deleted] (along with [Independent Occupational Therapist], who did not examine him), were of the view that the Appellant was ready to attempt a gradual return to work. [MPIC's Doctor #1] was also of this view. In fact, the Appellant and his wife believed and expected that a graduated return to work plan would be developed, following their meeting with the case manager on November 4, 2004. In fact, following that meeting, the file shows that the case manager did begin to solicit a transferable skills analysis, a physical demands analysis, a report from [Appellant's Doctor #2], and that she interviewed the Appellant's former employer by telephone. However, instead (possibly because of the video surveillance and what MPIC came to believe as a result of it) this gradual return to work program was never initiated or attempted. Yet the panel finds that the evidence establishes only that the Appellant was able to attempt a gradual return to work program. The evidence does not establish that he was in fact able to hold either of the jobs he held prior to the motor vehicle accident.

MPIC and [MPIC's Doctor #1] seem to base their opinion on the Appellant's ability to work largely upon the video evidence from December of 2004 and in particular the tapes of December 15, 2004.

However, the panel is of the view that these few hours of videotape do not equate to an ability to perform the demands of a full-time, full-duty medium strength demand occupation.

While MPIC relied upon [MPIC's Doctor #1] and her opinions of the video evidence, it did not request a functional capacity evaluation or independent medical examination report or put into place any gradual return to work plan, in spite of the recommendations of all the Appellant's caregivers that this be undertaken and the willingness and preparedness of the team, including the Appellant, his doctor and one of his employers, to participate in the program.

Even [MPIC's Doctor #1] acknowledged that while it would be reasonable to expect that the Appellant could do his full duties full-time, she would recommend, as she does for her patients, a gradual return to work attempt.

This was not undertaken in this case, in spite of the recommendations of caregivers and healthcare consultants and the Appellant's and employer's willingness to participate.

Although MPIC has argued that weight restrictions are not a determining factor in this case and that some duties listed in the Physical Demands Analysis, particularly regarding lifting requirements, are only possible or occasional requirements and not constant duties of the job, the panel is of the view that any possible duties an employee may be asked to perform must be considered as part of the duties of the job and that the Appellant must be able to perform them in order to return to full-time, full duty employment.

An assessment of whether the Appellant can successfully perform the duties of these jobs can only be concluded after further investigations and assessment or, at least, a gradual return to

work experience. This was not pursued by MPIC and the panel is unable to conclude that the Appellant was unable to perform these jobs in February 2005.

Based upon the evidence of the Appellant and his wife, and his caregivers, we find that the Appellant was not able to hold the employment he held prior to the motor vehicle accident, as set out in Section 110(1)(a). The Appellant has met the onus upon him of showing, on a balance of probabilities, that the Internal Review Officer erred in finding that he had violated Section 160 of the MPIC Act by knowingly providing false or inaccurate information to the Corporation and in concluding that the Appellant was able to return to the employment that he held at the time of the motor vehicle accident.

The Appellant's appeal is allowed. The Internal Review Decision dated April 28, 2005 is hereby rescinded. The Commission finds that the Appellant was entitled to receive PIPP benefits, including IRI, with interest, from February 21, 2005. The Commission will refer the question of the amount of these PIPP benefits back to the Appellant's case manager for calculation, and will retain jurisdiction in the event that the parties are unable to agree to the amount of benefit compensation.

Dated at Winnipeg this 28th day of September, 2010.

LAURA DIAMOND

LEONA BARRETT

WILF DEGRAVES