Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File Nos.: AC-05-102 AND AC-06-168

PANEL:	**Ms Yvonne Tavares, Chairperson** **Ms Laura Diamond** **Ms Mary Lynn Brooks**
APPEARANCES:	**The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.**
HEARING DATES:	**October 13 and 14, 2010**
ISSUE(S):	**1. Calculation of Gross Yearly Employment Income and Income Replacement Indemnity benefits;** **2. Entitlement to Income Replacement Indemnity benefits beyond July 11, 2005; and** **3. Reimbursement of expenses for chiropractic care, trigger point injections and various medication, travel and miscellaneous expenses.**
RELEVANT SECTIONS:	**Sections 81(1), 110(1)(a), 111(1), 136(1)(a) and (d) of The Manitoba Public Insurance Corporation Act ('MPIC Act');** **Section 3(2) and Schedule C of Manitoba Regulation 39/94;** **Section 5(a), 19 and 38 of Manitoba Regulation 40/94**

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

FACTS AND BACKGROUND

The Appellant, [text deleted] was involved in a motor vehicle accident on October 26, 2004, when her vehicle, which was stopped at a stop light, was rear-ended. The Appellant reported severe pain in her neck, upper and lower back and right jaw following the accident. Due to the

bodily injuries which the Appellant sustained in the motor vehicle accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act.

IRI Benefits

At the time of the motor vehicle accident, the Appellant was a self-employed [professional]. [Text deleted]. At the appeal hearing, the Appellant described her [text deleted] practice prior to the accident as a very busy practice which engaged her for up to 80 hours per week and provided her with an income of $75,000 per year. The Appellant testified that during the period in late 2004 and into 2005, her [text deleted] practice suffered because she could not keep up with the workload due to the injuries resulting from the motor vehicle accident. She was also unable to take on clients to the degree she had before in order to maintain her successful [text deleted] practice.

As the Appellant was unable to return fully to her employment after the motor vehicle accident due to her motor vehicle accident-related injuries, she became entitled to income replacement indemnity ("IRI") benefits pursuant to Section 81(1)(a) of the MPIC Act. For the purposes of calculating her IRI benefits, she was classified as a Level 2 [professional] and her gross yearly employment income ("GYEI") was calculated as $76,194, in accordance with Schedule C of Manitoba Regulation 39/94. On November 24, 2004, the Appellant returned to work at 30% of her job duties and her entitlement to IRI was reduced accordingly.

In a decision dated January 5, 2005, MPIC's case manager set out the facts and statutory provisions relevant to the assessment of the Appellant's GYEI and IRI benefits. The Appellant disagreed with that decision and sought an Internal Review. In a decision dated March 14, 2005,

the Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision, noting that:

> Section 3(2) of Manitoba Regulation 39/94 sets out the prescribed method for computing GYEI for self-employed individuals.
>
> Once the GYEI is established, the legislation requires that notional deductions be made for income tax, CPP contributions, and the like, with the IRI being determined by applying the 90% figure (Section 11191) of the Act) to the notional "net income".
>
> This is what was done in your case, and it was done in accordance with the legislation as written.
>
> Your assertion that your business/office expenses should be used in calculating your net income simply has no statutory foundation.
>
> I have reviewed your file with respect to the IRI payments made. The 30% reduction of your net income was effective November 24, 2004 (not two weeks after your accident as you allege) and your case manager did not "miss" paying one week of IRI between the period – November 2, 2004 to January 16, 2005.

The Appellant has appealed that Internal Review Decision to this Commission. The issue which requires determination on this appeal is **whether the Appellant's Gross Yearly Employment Income and Income Replacement Indemnity benefits were correctly assessed and calculated**.

After she returned to work at 30% of her essential job duties on November 24, 2004, MPIC continued to assess the Appellant's capacity to work. Over time, MPIC's case manager concluded that the Appellant's ability to work was increasing and, as a result, that her entitlement to IRI benefits decreased proportionately. In a decision dated July 12, 2005, MPIC's case manager terminated the Appellant's entitlement to IRI benefits effective July 11, 2005, concluding that the Appellant was able to hold the employment that she held at the time of the accident.

The Appellant disputed that decision and sought an Internal Review from MPIC. She provided a summary of the days and hours worked by her between January and September 2005, as well as substantial financial evidence in support of her claim.

In a decision dated September 29, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision. The Internal Review Officer found that the Appellant was working at a full-time capacity of 35 to 40 hours per week and was substantially able to perform the essential duties of a [text deleted]. As she was able to work full-time, or 35 to 40 hours per week, she was no longer entitled to IRI benefits. Although the Appellant argued that, due to her pain, she was unable to work her normal pre-accident hours (between 60 to 80 hours per week), and that she was still suffering from her injuries, the Internal Review Officer found the Appellant was physically capable of working full-time as there was no physical impairment of function to preclude her from doing so and there were no essential duties identified which she was unable to do.

The Appellant has appealed that Internal Review Decision to this Commission. The issue which requires determination on this appeal is the Appellant's **entitlement to Income Replacement Indemnity Benefits beyond July 11, 2005**.

Non-prescription Medication, Top-up IRI Benefits, Travel and Photocopy Expenses

During the period immediately following the accident, the Appellant used a topical analgesic, Aspercreme (or Asperserve), herbal baths, an over-the-counter anti-inflammatory medication called Spasmhalt, Advil and Sleep-EZE-D to get relief from the pain and to be able to sleep at night. Subsequently, the Appellant's family doctor ([Appellant's Doctor #1]) prescribed Flexeril

(Cyclobezaprine) a muscle relaxant for her to take at night, while using Tylenol during the day. The Appellant claimed reimbursement of these expenses from MPIC.

In a decision dated March 18, 2005, MPIC's case manager advised the Appellant that MPIC would only reimburse her for the cost of one anti-inflammatory medication (APO-DICLO, Advil, or Asperserve) and one muscle relaxant (Cyclobenzaprine or Spasmhalt). Additionally, MPIC's case manager denied the Appellant's claim for reimbursement of expenses for Sleep EZE-D and herbal baths as those items could not be supported as medically required. This decision was based upon a review of the Appellant's file by MPIC's Health Care Services Team. MPIC's medical consultant, [MPIC's Doctor], had expressed concern over the Appellant's apparent use of multiple prescriptions for anti-inflammatory medication. This view was echoed by [Independent Doctor], who had conducted a third party medical examination of the Appellant on May 31, 2005. [MPIC's Doctor] was also of the opinion that over-the-counter medications such as Sleep-EZE D and herbal baths were not medically required or essential for the Appellant's condition. The Appellant sought an Internal Review of this decision. In a decision dated May 12, 2005, the case manager allowed funding for both Flexeril and Spasmhalt medication expenses, based upon additional information provided by the Appellant's family physician justifying the requirement for two separate muscle relaxants.

On January 17, 2005, the Appellant provided MPIC with a declaration of her hours worked on a weekly basis. On March 21, 2005, MPIC's case manager provided the Appellant with a reconciliation of her IRI benefits from November 3, 2004 to February 27, 2005. The Appellant's IRI entitlement was reduced by her declared work hours. The Appellant disagreed with the case manager's decision and filed an Application for Review of this decision.

In March of 2005, the Appellant also sought coverage for travel costs for the purpose of attending a meeting at MPIC and for photocopying expenses. In a decision dated March 21, 2005, MPIC's case manager denied the Appellant's claim for travel expenses associated with a trip to MPIC for the purpose of attending a meeting. In a decision dated March 22, 2005, MPIC's case manager denied the Appellant's claim for reimbursement of expenses for photocopying documents that had been requested by MPIC. The case manager advised that neither expense claim qualified for reimbursement under the MPIC Act or Regulations, as there was no PIPP coverage for photocopying, and the meeting was not for the purpose of receiving care related to injuries sustained in the motor vehicle accident. The Appellant sought Internal Reviews of these decisions.

In a decision dated November 25, 2005, the Internal Review Officer considered the Appellant's Applications for Review of the case manager's decisions made with respect to the following issues:

- reimbursement of only one anti-inflammatory medication (APO-DICLO, Advil, or Asperserve) and reimbursement of expenses for Sleep EZE-D and herbal baths;
- whether top-up IRI benefits were correctly assessed and calculated;
- reimbursement of travel expenses associated with a trip to MPIC for the purpose of attending a meeting; and
- reimbursement of expenses for photocopying documents that had been requested by MPIC.

The Internal Review Officer upheld each of the case manager's decisions and dismissed the Appellant's Applications for Review.

The Appellant has appealed that Internal Review Decision to this Commission. At the appeal hearing, the Appellant explained that she relied on over-the-counter medications for pain relief until she was able to obtain an appointment with her family doctor, sometime in January 2005. Once she saw her family doctor, she obtained prescriptions for various muscle relaxants, anti-inflammatories and sleep aids, which were covered by MPIC. Upon hearing this explanation from the Appellant, counsel for MPIC advised that MPIC would reimburse the Appellant for her initial expense claim for over-the-counter medications (excluding expenses related to herbal bath salts, which would not be covered). The Appellant however, maintained that she continued to use certain over the counter medications, including Aspercreme and herbal baths, for pain relief throughout the duration of her claim. As a result, the issues which require determination on this appeal are:

- **entitlement to funding for more than one anti-inflammatory medication and reimbursement of expenses for non-prescription medications;**
- **whether top-up IRI benefits were correctly assessed and calculated;**
- **reimbursement of travel expenses associated with a trip to MPIC for the purpose of attending a meeting; and**
- **reimbursement of expenses for photocopying documents that had been requested by MPIC.**

Chiropractic Treatment

The Appellant began attending for [Appellant's Chiropractor #1] immediately following the motor vehicle accident of October 26, 2004, for management of her motor vehicle accident-related injuries. The Appellant continued with chiropractic treatment through 2004 into 2005.

[Appellant's Chiropractor #1] continued to provide treatment plan reports and assessments of the Appellant's condition to MPIC throughout her period of care with him.

Following the third party examination by [Independent Doctor] on May 31, 2005, the Appellant began, at his recommendation, to undergo Active Release Technique (ART) therapy with another chiropractor, [Appellant's Chiropractor #2]. [Appellant's Chiropractor #1] submitted a treatment plan report dated July 18, 2005 recommending ongoing chiropractic treatment in conjunction with the ART treatment. He recommended two (2) visits per week to September 2005, for "cervical, thoracic and sacroiliac vertebral subluxation complex".

On August 12, 2005, [MPIC's Chiropractor], chiropractic consultant with MPIC's Health Care Services Team, reviewed the treatment plan reports and concluded that, despite the passage of almost six months, the Appellant had not gained sustained and significant improvement and that further chiropractic treatment would not be considered a medical requirement.

In a decision dated August 22, 2005, MPIC's case manager wrote to the Appellant to advise her that:

> A member of our Health Care Services, Chiropractic Consultant, reviewed the medical information in regards to whether there is a causal relationship (*sic*) further chiropractic treatment is required to address the motor vehicle accident injuries.
>
> The highlights of the chiropractic review:
> - ❖ Treatment Plan Reports of January 16, 2005, April 2005 and July 18, 2005 were reviewed.
> - ❖ There is little change in your condition, as outlined in reports in six months.
> - ❖ Due to the absence of sustained and significant improvement, further chiropractic treatment would not be considered a medical requirement.
> - ❖ Further chiropractic treatment will not improve your symptoms or function.
>
> As the medical information no longer indicates you require chiropractic treatment to address the motor vehicle accident injuries, you are no longer entitled to chiropractic treatment under the Personal Injury Protection Plan.

> To assist you in making alternate arrangements, we will cover chiropractic treatment up to September 16, 2005. As of September 17, 2005, you will be responsible for any additional chiropractic treatment.

The Appellant sought an Internal Review of that decision. In a decision dated November 28, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer, citing [Appellant's Chiropractor #1's] and [Appellant's Chiropractor #2's] reports of improvements since beginning ART treatment but with no documentation of any significant improvement from exclusively chiropractic care, found that further chiropractic treatment would not result in any demonstrable improvement to the Appellant's condition. As such she was not convinced that further chiropractic treatment was "medically required" within the meaning of the legislation.

The Appellant has appealed that Internal Review Decision to this Commission. The issue which requires determination on this appeal is **whether the Appellant is entitled to reimbursement of expenses for chiropractic treatment beyond September 16, 2005**.

Vision Care

The Appellant testified at the hearing that a few months following the motor vehicle accident she was having difficulty with pressure on her eyes. She felt that the swelling in her neck as a result of her motor vehicle accident-related injuries caused pressure on her brain and eyes, causing her vision to change. Accordingly, she attended upon an optometrist, [Appellant's Optometrist], and her eyeglass prescription was changed significantly as a result of that visit. The Appellant related the change in her eyeglass prescription to the motor vehicle accident and sought

reimbursement from MPIC for the expenses related to her eye examination, her eyeglasses and travel expenses related thereto.

The Appellant's case manager wrote to her optometrist in January and February of 2006 requesting information as to whether her prescription or vision had changed as a result of injuries sustained in the accident. [Appellant's Optometrist] did not provide a response. In a decision dated March 2, 2006, MPIC's case manager found that there was no information on the Appellant's file to support that her eyeglasses were damaged as a result of the motor vehicle accident or that her eyeglass prescription changed as a result of the motor vehicle accident of October 26, 2004. As a result it was the case manager's decision that there was no entitlement to reimbursement for these expenses.

The Appellant sought an Internal Review of that decision. In a decision dated June 13, 2006, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that there was no information on the Appellant's file to support that her eyeglasses were damaged or that her prescription/vision changed as a result of injuries arising from the motor vehicle accident of October 26, 2004. The Internal Review Officer therefore found that there was no entitlement to reimbursement for the eye examination, eyeglasses or travel expenses related thereto.

The Appellant has appealed that decision to this Commission. The issue which requires determination is **whether or not the Appellant is entitled to reimbursement of her expenses relating to the eye examination, prescription glasses and travel expenses**.

ART, Pool Therapy and Kennel Fees

The Appellant continued to receive ART therapy, covered by MPIC, until June 2006. On May 23, 2006, another chiropractor, [Appellant's Chiropractor #3], submitted a treatment plan requesting further ART treatments at a frequency of two times per week for a further six weeks, noting that the Appellant had been improving steadily with the ART treatment. [Appellant's Chiropractor #3] also indicated that the Appellant would like to incorporate "pool therapy" into her treatment plan.

The Appellant's file was reviewed by [MPIC's Chiropractor] who noted that the Appellant had already received extensive ART therapy and that further treatment of the same kind was not likely to provide much benefit. Nor did he find that "pool therapy" was a medical requirement.

Accordingly, on June 21, 2006, the Appellant's case manager denied funding for further ART therapy effective June 23, 2006. This decision also stated that pool therapy was not a "medical necessity" and therefore MPIC would not reimburse the cost of same.

Throughout this time, the Appellant had been using alcohol for pain control but had been advised to stop drinking alcohol for this purpose. She sought assistance from the [text deleted] Employee Assistance Program and a psychiatrist, [Appellant's Psychiatrist], recommended that she participate in a five to seven day program for alcohol detoxification. It was the Appellant's opinion that her heavy alcohol use was directly connected to her motor vehicle accident. She noted that while hospitalized, she would need to place her pet dogs in a kennel and requested that MPIC pay for the dog kennel fees incurred. In a decision dated May 31, 2006, MPIC's case manager stated that there were no provisions under the MPIC Act and Regulations to allow for

reimbursement of expenses incurred for dog kennelling. The Appellant sought an Internal Review of this decision.

The Internal Review Decision of August 11, 2006 reviewed the case manager's decisions of May 31, 2006 and June 21, 2006. The Internal Review Officer confirmed the case manager's decisions and dismissed the Appellant's Applications for Review. The Internal Review Officer noted that:

> ...considering the extensive therapy (216 treatments including athletic therapy, physiotherapy, chiropractic treatment, and Active Release Technique therapy) you have undergone since the accident, it seems highly unlikely that further Active Release Technique therapy will result in any such demonstrable improvement. There are no functional deficits noted that would preclude you from proceeding with an exercise program independently.
>
> I agree with [MPIC's Chiropractor's] opinion that the medical information on file does not support the need for further ART treatment or pool therapy. The medical evidence currently available does not support the ongoing need for further ART treatment or a pool therapy program.

She also found that there were no provisions under PIPP to reimburse the Appellant for dog kennelling fees.

The Appellant has appealed that Internal Review Decision to this Commission. At the hearing of this appeal, the Appellant withdrew her appeal for reimbursement of expenses related to pool therapy and dog kennelling as she had not in fact incurred any expenses for those matters. As a result, the only issue which requires determination on this appeal is the Appellant's **entitlement to reimbursement of expenses for ART therapy**.

TENS Unit

In March 2006, the Appellant initiated treatment with [Appellant's Doctor #2] at [text deleted] for her ongoing pain complaints. The Appellant testified at the hearing that she purchased a TENS machine on the advice of [Appellant's Doctor #2] so that she could get relief from her pain symptoms at home. The Appellant sought reimbursement from MPIC for the cost of a TENS machine which she purchased for at-home use.

On August 10, 2006, [MPIC's Doctor] noted that a TENS machine was not medically required for treatment of the Appellant's injuries. [Appellant's Doctor #2], in a letter dated August 15, 2006, indicated that the purpose of the TENS equipment was to treat pain on an ongoing basis, independently at home and to allow the Appellant some improved access to treatments that bring relief, and decrease dependence on healthcare providers.

In a decision dated September 1, 2006, MPIC's case manager advised the Appellant that MPIC would not reimburse the cost of a TENS machine. The case manager indicated that a TENS machine was an elective treatment option and not medically required.

The Appellant sought an Internal Review of that decision. In a decision dated October 17, 2006, the Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision. The Internal Review Officer found that the Appellant was not entitled to reimbursement for the expense of a TENS machine. The Internal Review Officer found that the medical information on file did not support the need for a TENS unit. Further she found that a TENS unit would not accelerate the Appellant's recovery, nor would it promote her rehabilitation.

The Appellant has appealed that decision to this Commission. The issue which requires determination on this appeal is **whether the Appellant is entitled to reimbursement for the cost of a TENS machine**.

Trigger Point Injections and Contoured Pillow

[Appellant's Doctor #2] began trigger point injection treatments in March 2006, using a dry needling approach and anaesthetic. The Appellant found this treatment to be beneficial. She felt considerably better and found that she had several hours intermittently with periods of no pain.

[Appellant's Doctor #2] diagnosed chronic myofascial pain syndrome which appeared to be resolving with appropriate myofascial needling treatments. MPIC approved 10 treatments, as they had been providing symptomatic benefit and were considered medically beneficial. Ten trigger point injection treatments were administered by [Appellant's Doctor #2] from August 3, 2006 to January 19, 2007. He opined, on November 14, 2006 that it was his impression that the Appellant was not improving, but that the Appellant found the injections to be helpful.

In a report to the Appellant's case manager dated December 21, 2006, [Appellant's Doctor #2] noted that the Appellant's symptoms were continuing and he was not sure whether the injections had made her much better overall, although she had reported that they were helpful for a period of time. In a report to the Appellant's case manager dated January 18, 2007, [Appellant's Doctor #2] noted that the Appellant was feeling quite a bit better, but still had some pain and wanted injections again for her shoulders and back. [Appellant's Doctor #2] also noted that the Appellant was wondering if a contoured pillow would be helpful for her neck and shoulder pains. [Appellant's Doctor #2] indicated that it might be of help and that he supported the usage of one of those pillows and requested funding from MPIC for the purchase of a contoured pillow.

In a report to the Appellant's case manager dated February 13, 2007, [Appellant's Doctor #2] indicated that the Appellant wanted to continue with trigger point injection treatment as she found the treatments beneficial. He therefore requested further funding from MPIC for additional trigger point injections.

The Appellant's file was referred to [MPIC's Doctor] for her opinion as to whether additional trigger point injections and a contoured pillow were medically required as a result of the motor vehicle accident. On February 19, 2007, [MPIC's Doctor] advised that trigger point injections were considered developmental therapy with no validated clinical indication. As a result, no further trigger point injections would be approved. With respect to the contoured pillow, [MPIC's Doctor] indicated that a contoured pillow would not be considered medically required to address healing of soft tissue injuries.

In a decision dated February 28, 2007, MPIC's case manager advised the Appellant that:

> This letter will confirm your request for funding for a pillow and further trigger point injections under the Personal Injury Protection Plan (PIPP).
> The medical information on file indicates that a pillow is not medically required. Therefore, Manitoba Public Insurance will not reimburse the cost of the contoured pillow. With regard to ongoing trigger point injections, the medical reports have been reviewed in conjunction with Health Care Services, and trigger point injections are not medically required and will no longer be considered.

The Appellant sought on Internal Review of that decision. In a decision dated April 18, 2007, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that a contoured pillow was not a "medical necessity" in the management of the Appellant's motor vehicle accident-related injuries. The Internal Review Officer also found that further trigger point injections were not

"medically required" for the management of the Appellant's motor vehicle accident-related injuries.

The Appellant has appealed that Internal Review Decision to this Commission. The issue which requires determination on this appeal is **whether the Appellant is entitled to reimbursement of expenses for a contoured pillow and for trigger point injections beyond January 19, 2007**.

Medication – Temazepam

In November 2006, [Appellant's Doctor #2] prescribed the medication Temazepam for the Appellant. He stated that it was his intention that a short trial of Temazepam be undertaken with respect to the pain component, but noted that it would not be advised for long term usage. [MPIC's Doctor] reviewed [Appellant's Doctor #2's] request and concurred with his recommendation. As a result, MPIC approved short term usage of this pain medication as medically required for the Appellant's soft tissue pain component.

[Appellant's Doctor #2] reported on December 5, 2006, that the Appellant was finding the Temazepam helpful in getting her to sleep, with about a 15 mg capsule nightly. This situation continued through [Appellant's Doctor #2's] reporting on February 13, 2007, although the Appellant reported less effectiveness to him around March 8, 2007. On June 4, 2007, [Appellant's Doctor #2] indicated that he was unable to determine how long the Appellant would require this medication as other previously documented issues such as some degree of depression and issues related to sleep dysfunction had also impacted upon her sleep difficulties.

[MPIC's Doctor] again reviewed the file on June 14, 2007 and noted the following:

> [Appellant's Doctor #2's] response of June 4, 2007 is noted. The Temazepam has helped with sleep but pain symptoms continue. As well, [Appellant's Doctor #2] references other issues that relate to sleep dysfunction. On balance, the Temazepam is not medically required for the pain symptoms.

The case manager's decision of June 14, 2007 advised that MPIC would no longer fund the cost of the medication Temazepam effective June 15, 2007.

The Appellant sought an Internal Review of that decision. In a decision dated August 9, 2007, the Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision. The Internal Review Officer found that the totality of evidence on the file did not establish or support that the further need for the medication, Temazepam, was "medically required" for injuries sustained in the motor vehicle accident.

The Appellant has appealed that decision to this Commission. The issue which requires determination on this appeal is **whether the Appellant is entitled to reimbursement for the cost of the medication, Temazepam**.

Medication – Spasmhalt

The Appellant was prescribed Spasmhalt, a muscle relaxant for control of her pain symptoms. She testified that she began the use of Spasmhalt shortly after the accident and continued using Spasmhalt until July of 2008. On March 5, 2008, her case manager wrote to [Appellant's Doctor #2] requesting his opinion as to whether the Spasmhalt continued to be medically required relating to injuries sustained in the motor vehicle accident. [Appellant's Doctor #2] replied noting that:

> She has continued to report that she finds this medication helpful, but it would not be considered medically required, and is not supported by the medical literature.

In a decision dated May 26, 2008, MPIC's case manager advised the Appellant that:

> We requested [Appellant's Doctor #2] advise if he felt that the medication Spasmhalt was still medically required. We enclose a copy of the fax for your review. As the medication is not considered medically required or not supported by the medical literature, MPI will no longer fund Spasmhalt effective May 31/08.

The Appellant sought an Internal Review of this decision. In a decision dated June 13, 2008, the Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision. The Internal Review Officer relied on [Appellant's Doctor #2's] opinion that Spasmhalt would not be considered medically required. She found that the totality of evidence on the file did not establish or support the further need for the medication, Spasmhalt, as being "medically required" for injuries sustained in the motor vehicle accident.

The Appellant has appealed that decision to this Commission. The issue which requires determination on this appeal is **whether the Appellant is entitled to reimbursement for the cost of the medication, Spasmhalt**.

Travel and Parking Expenses (Psychological Care)

On October 16, 2006, [Appellant's Doctor #2] wrote to the Appellant's case manager regarding concerns which he had reviewed with [Appellant's Doctor #3] (the Appellant's family physician at the time) about the Appellant's condition. [Appellant's Doctor #2] noted that she had previously been seen by someone in the psych health arena with respect to ethanol abuse issues. He indicated that he believed that she would benefit from sessions designed to enhance coping abilities with chronic pain and perhaps have that co-treated with issues related to her ethanol abuse. He indicated that he and [Appellant's Doctor #3] were in agreement that the Appellant has a very "complex situation due to her pains, personality traits and poor coping choices".

On November 24, 2006, the Appellant attended at a pre-hearing meeting before the Commission, which was held to deal with scheduling and other procedural issues connected with her appeals, including the number of days which might be required for the hearing of her appeals before the Commission. The meeting did not go well. The Appellant, after using profane language towards a member of the tribunal, walked out of the meeting. A complaint was sent to the [Appellant's professional licensing body] regarding the Appellant's conduct at the meeting. The [text deleted] Committee for the [Appellant's professional licensing body] authorized a charge of conduct unbecoming a [professional] against the Appellant. A panel of the [text deleted] Committee of the [Appellant's professional licensing body] found the Appellant guilty of conduct unbecoming a [professional] for swearing at a member of a tribunal and ordered that a formal reprimand be placed on her file. On March 14, 2007, the Appellant was also found to have behaved inappropriately before [text deleted] in a separate matter. The [text deleted] Committee authorized charges of [text deleted] against the Appellant [text deleted]. The Appellant was suspended from practicing [text deleted], and was restricted from returning to practice unless she practiced only under supervision, obtained a psychiatric or psychological assessment, and complied with any recommendations arising from the assessment.

The Appellant practiced under the supervision of another [professional] from April 30, 2007 to March 4, 2008, when her supervisor gave her 30 days notice that he was terminating her employment.

The Appellant described the stress and loss that these proceedings created for her. She had difficulty finding a supervisor, so lost the practice she had been struggling to maintain up to that point. Since 80% of her practice was [text deleted], when the restrictions forced her to end her involvement on [text deleted], she was paid only at half [text deleted] for the work already

performed, which caused a significant income loss to her. She lost all her remaining clients and was not able to bill out fully for significant work which she had already done for them. When she was able to find a supervised position with a [professional] on April 30, 2007, she had to work extremely long hours for a low salary. She had to pay her own car expense and had to take on a heavy work load, sometimes working from 6:00 a.m. until 6:00 p.m., with several hours of work a night. She also often found herself on call for the office during nights and weekends, sometimes for as long as five weeks at a time.

In the meantime, the Appellant noted that she was trying to abide by the counselling requirements to attend at psychological appointments, as well as trying to deal with the hearing of the allegations before the [Appellant's professional licensing body]. During this period, the Appellant received psychological assessment by [Appellant's Psychologist #1] and psychological counselling from [Appellant's Psychologist #2]. The Appellant also appealed the decision of the [Appellant's professional licensing body] to the Manitoba Court of Appeal and was dealing with this proceeding.

In February of 2009, the Appellant submitted travel and parking expenses to MPIC for reimbursement. These expenses covered her travel for psychological assessment and psychotherapy treatment between April 3, 2007 and February 9, 2009. The Appellant's case manager provided her with a decision on February 27, 2009, indicating that the requirement for psychological care was not related to the motor vehicle accident of October 26, 2004. The Appellant sought an Internal Review of this decision.

In a decision dated April 1, 2009, the Internal Review Officer reviewed reports from [Appellant's Doctor #2], [Appellant's Doctor #4] (a family doctor), [Appellant's Psychologist

#1] and [Appellant's Psychologist #2]. The Internal Review Officer concluded that the Appellant's need to attend for psychological assessment and psychotherapy treatment related to the restrictions on her license to practice [text deleted] in Manitoba imposed by the [Appellant's professional licensing body] and not the injuries sustained in the motor vehicle accident. MPIC would not provide funding for either the assessment or the treatment. As a result, the Appellant was not entitled to reimbursement for travel expenses incurred as a result of her receiving psychotherapy treatment.

The Appellant has appealed that decision to this Commission. The issue which requires determination on this appeal is **whether the Appellant is entitled to reimbursement for travel expenses incurred as a result of her receiving psychotherapy treatment**.

Medications - Triazolam, Lorazepam and Quetiapine

When her employment with the supervising [professional] was terminated in March, 2008, the Appellant testified that she continued to try to find alternate employment, but was unable to do so. With continued rejections of her applications for employment, she began to realize that it was hopeless for her to fulfill the supervisory requirements set by the [Appellant's professional licensing body]. She faced financial hardship and began looking for other sources of employment. All of these attempts were unsuccessful.

She continued to attend for psychological counselling. In August 2008, she also contacted the [Appellant's professional licensing body] to request a special hearing date to consider lifting the supervisory requirement and to provide for the continuation of a further 12 counselling sessions. The Appellant explained that, at the hearing, the [Appellant's professional licensing body] removed the supervision requirement and also removed the requirement that she attend for

further counselling. However, a sentencing hearing was scheduled for October 2008. The Appellant described this as a very stressful time for her. She went to see her physician, [Appellant's Doctor #4] for a prescription to ease her anxiety and stress. [Appellant's Doctor #4] prescribed Lorazepam for the Appellant to take during the day.

On January 30, 2009, [Appellant's Doctor #4] reported that, due to medical reasons, the Appellant was incapacitated to work or look for any type of position due to a condition of acute anxiety, present since December 1, 2008. He prescribed her treatment with Triazolam and Lorazepam for the management of this condition.

As a result, the Appellant sought reimbursement for the anti-anxiety medications she was prescribed: Triazolam, Quetiapine and Lorazepam. She also sought reimbursement for travel expenses associated with attending medical appointments with [Appellant's Doctor #3], [Appellant's Doctor #2] and [Appellant's Doctor #4].

The case manager's decision of April 3, 2009 denied the Appellant's claim for reimbursement of travel expenses related to certain attendances with [Appellant's Doctor #3], [Appellant's Doctor #2] and [Appellant's Doctor #4]. A separate case manager's decision of April 15, 2009 denied the Appellant's claim for reimbursement of the medications: Triazolam, Quetiapine and Lorazepam. The case manager found that the Appellant was not entitled to funding of the travel expenses or the medications under PIPP because a cause and effect relationship to the motor vehicle accident was not apparent based on the available medical information.

The Appellant sought an Internal Review of that decision. In a decision dated June 10, 2009, the Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision. The Internal Review Officer noted the Appellant's position:

> You did not agree with the decision, and in your Application for Review wrote "Complete and utter loss of all enjoyment of life, career, and ability to wok (sic) or look for work, purpose of life, due to being and suffering bodily injuries in accident on October 26, 2004. All appointments were due to expenses incurred by the victim because of the accident of October 26, 2004."

The Internal Review Officer concluded that the travel expenses had been correctly calculated and that no cause and effect relationship between the motor vehicle accident and the use of Triazolam (sedative), Quetiapine (used as an anti-psychotic medication or in relation to a bi-polar condition) and Lorazepam (anxiolytic) had been established.

The Appellant has appealed that decision to this Commission. The issues which require determination on this appeal are **whether the Appellant is entitled to reimbursement for travel expenses associated with attending medical appointments with [Appellant's Doctor #3], [Appellant's Doctor #2] and [Appellant's Doctor #4] and whether the Appellant is entitled to reimbursement for the cost of the medications - Triazolam, Quetiapine and Lorazepam**.

Travel Expenses [Appellant's Doctor #5] and Medication - Hydrocortisone

The Appellant continued attending for trigger point injections with [Appellant's Doctor #2] (at her own expense) until February 2008 when [Appellant's Doctor #2] advised her that he was closing his practice to routine injections. [Appellant's Doctor #2] referred the Appellant to [Appellant's Doctor #5]. The Appellant saw [Appellant's Doctor #5] and tried treatment with cranial acupuncture in March of 2008. Since this did not assist with her pain complaints as much

as the trigger point injections, [Appellant's Doctor #5] then performed trigger point injections for her as well.

The Appellant testified that she had more success with the trigger point injections than with the cranial acupuncture or prolotherapy, although, because of the schedule for the injections, she didn't get as much relief from [Appellant's Doctor #5] as she had with [Appellant's Doctor #2]. She continued with these injections, approximately every four weeks, until October of 2008 when she began seeing [Appellant's Doctor #6]. The Appellant sought reimbursement of travel expenses associated with attending [Appellant's Doctor #5's] office for trigger point injections, cranial acupuncture and prolotherapy treatment. The Appellant also sought reimbursement of expenses for the medication – Hydrocortisone, which she indicated was prescribed by [Appellant's Doctor #7] to treat a skin condition caused by the drug Baclofen.

The case manager's decision of July 29, 2009 denied the Appellant's claim for reimbursement of travel expenses for the purpose of receiving trigger point injections, cranial acupuncture and prolotherapy treatment with [Appellant's Doctor #5]. The case manager also denied funding for the medication Hydrocortisone. The case manager found that the requirement for that medication was unrelated to injuries sustained in the motor vehicle accident. The Appellant sought an Internal Review of that decision.

In a decision dated October 26, 2009, the Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision of July 29, 2009. The Internal Review Officer found that the Appellant was not entitled to reimbursement of travel expenses associated with attending [Appellant's Doctor #5's] office for trigger point injections, cranial acupuncture, or prolotherapy since those treatments would not be considered "medically

required" techniques. The Internal Review Officer also rejected funding for the hydrocortisone 1% cream prescribed for perianal burning and accompanying cutaneous erythema. Based upon an opinion provided by [MPIC's Doctor] on July 27, 2009, the Internal Review Officer concluded that the requirement for the hydrocortisone cream was not motor vehicle accident related.

The Appellant has appealed that Internal Review Decision to this Commission. At the appeal hearing, the Appellant explained that the hydrocortisone cream was connected to the side-effects she experienced as a result of taking the prescribed muscle relaxant Baclofen which replaced the Spasmhalt she had been using. MPIC's healthcare consultants had warned, when approving the Baclofen prescription, that care should be had with regard to the possible development of gastrointestinal symptoms as side effects of the Baclofen. In fact, the Appellant testified that the Baclofen resulted in her having difficulty with severe diarrhea. This necessitated the prescription for hydrocortisone cream by [Appellant's Doctor #7]. Upon hearing this explanation from the Appellant, counsel for MPIC advised that the expenses for hydrocortisone cream would be reimbursed by MPIC. Based upon that advice from counsel for MPIC, the Appellant withdrew her appeal of the Internal Review Decision dated October 26, 2009 with respect to the entitlement for funding of the medication hydrocortisone. As a result, the only issue which requires determination on this appeal is the Appellant's **entitlement to reimbursement of expenses associated with attending [Appellant's Doctor #5's] office**.

Travel Expenses [Appellant's Doctor #6]

On October 14, 2008, [Appellant's Doctor #5] (who was leaving the province) referred the Appellant for a consultation with [Appellant's Doctor #6]. [Appellant's Doctor #6] diagnosed myofascial pain syndrome as a result of the motor vehicle accident of October 26, 2004 and

began a series of trigger point injections through to February 2009. He indicated that the Appellant responded very well to the treatment, but that the effect of the needling was short acting. The Appellant indicated that [Appellant's Doctor #6] had not charged her for these treatments.

The Appellant sought reimbursement of her travel expenses for treatment by [Appellant's Doctor #6] between October 14, 2008 and February 11, 2009. The case manager's decision of July 9, 2009 denied the Appellant's claim for travel expenses to attend [Appellant's Doctor #6] for trigger point injections since those injections were elective and not medically required. The Appellant sought an Internal Review of that decision.

In a decision dated October 26, 2009, the Internal Review Officer dismissed the Appellant's Application for Review and upheld the case manager's decision of July 9, 2009. The Internal Review Officer found that the Appellant was not entitled to reimbursement of travel expenses associated with attending for trigger point injections with [Appellant's Doctor #6] since those treatments were not medically required in accordance with the MPIC Act.

The Appellant has appealed that Internal Review Decision to this Commission. The issue which requires determination on this appeal is **whether the Appellant is entitled to reimbursement for travel expenses associated with attending [Appellant's Doctor #6]**.

ISSUES UNDER APPEAL

A hearing into the Appellant's several appeals was held by the Commission on October 13 and 14, 2010. The Appellant testified at the hearing. In addition, the Commission had reference to documentation including medical reports from physicians, chiropractors, and physiotherapists, as

well as decisions of the [Appellant's professional licensing body] and the Manitoba Court of Appeal concerning the Appellant's [text deleted] practice. The following appeals were considered by the Commission and are discussed below:

	Issues	Internal Review Decision
1.	Whether the Appellant's Gross Yearly Employment Income and Income Replacement Indemnity benefits were correctly assessed and calculated	March 14, 2005
2.	Entitlement to Income Replacement Indemnity Benefits beyond July 11, 2005	September 29, 2005
3.	Entitlement to funding for more than one anti-inflammatory medication and reimbursement of expenses for non-prescription medications Whether top-up IRI benefits were correctly assessed and calculated Reimbursement of travel expenses associated with a trip to MPIC for the purpose of attending a meeting Reimbursement of expenses for photocopying documents that had been requested by MPIC	November 25, 2005
4.	Entitlement to reimbursement of expenses for chiropractic treatment beyond September 16, 2005	November 28, 2005
5.	Entitlement to reimbursement of expenses relating to eye examination, prescription glasses and travel expenses	June 13, 2006
6.	Entitlement to reimbursement of expenses for ART therapy	August 11, 2006
7.	Entitlement to reimbursement of the cost of a TENS machine	October 17, 2006
8.	Entitlement to reimbursement of expenses for a contoured pillow and for trigger point injections beyond January 19, 2007	April 18, 2007
9.	Entitlement to reimbursement of the medication, Temazepam	August 9, 2007
10.	Entitlement to reimbursement of the medication, Spasmhalt	June 13, 2008
11.	Entitlement to reimbursement for travel expenses associated with attending for psychotherapy treatment	April 1, 2009
12.	Entitlement to reimbursement for travel expenses and for the medications - Triazolam, Quetiapine and Lorazepam	June 10, 2009
13.	Entitlement to reimbursement of expenses associated with attending [Appellant's Doctor #5]	October 26, 2009
14.	Entitlement to reimbursement for travel expenses associated with attending [Appellant's Doctor #6].	October 26, 2009

RELEVANT STATUTORY PROVISIONS

The MPIC Act provides that:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

(a) he or she is unable to continue the full-time employment;

(b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;

(c) the full-time earner is deprived of a benefit under the *Employment Insurance Act* (Canada) to which he or she was entitled at the time of the accident.

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;

I.R.I. is 90% of net income

111(1) The income replacement indemnity of a victim under this Division is equal to 90% of his or her net income computed on a yearly basis.

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

(b) the purchase of prostheses or orthopedic devices;

(c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;

(d) such other expenses as may be prescribed by regulation.

Section 3(2) of Manitoba Regulation 39/94 provides that:

GYEI from self-employment

3(2) Subject to Section 5, a victim's gross yearly employment income derived from self-employment that was carried on at the time of the accident is the greatest amount of business income that the victim received or to which the victim was entitled within the following periods of time:

(a) for the 52 weeks before the date of the accident;

(b) for the 52 weeks before the fiscal year end immediately preceding the date of the accident;

(c) where the victim has operated the business for not less than two fiscal years before the date of the accident, for the 104 weeks before the fiscal year end immediately preceding the date of the accident divided by two;

(d) where the victim has operated the business for not less than three fiscal years before the date of the accident, for the 156 weeks before the fiscal year end immediately preceding the date of the accident divided by three;

or according to Schedule C.

SCHEDULE C
CLASSES OF EMPLOYMENT

Determination of level of experience

1 For the purpose of the following Table, the corporation shall determine the level of experience that the victim has in the class of employment determined for the victim, in accordance with the following:

(a) **"Level 1"** means less than 36 months of experience;
(b) **"Level 2"** means 36 months or more but less than 120 months of experience;
(c) **"Level 3"** means 120 months or more of experience.

Calculation of months

2 For the purpose of calculating the number of months of experience under section 1 of this schedule, a month in which an employment begins or ends is deemed to be a complete month of experience.

Sections 5, 19 and 38 of Manitoba Regulation 40/94 provide that:

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

(a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

Travel and accommodation
19 Subject to sections 20 to 29 and Schedule B, the corporation shall pay travel or accommodation expenses incurred by a victim for the purpose of receiving care.

Medication, dressings and other medical supplies
38 The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

DISCUSSION

1. Whether the Appellant's Gross Yearly Employment Income and Income Replacement Indemnity benefits were correctly assessed and calculated

The Appellant submitted that her GYEI and IRI benefits had not been correctly assessed and calculated by MPIC. She argued that MPIC failed to consider the fact that she was a self-employed person who was only able to work part-time due to her injuries. Despite not being able to work at her full capacity, she continued to incur ongoing business expenses such as practicing fees, insurance, rent and advertising costs. Her situation, she submitted, was different from a [professional] who was working for the government or was an employee [text deleted]. There was an inequity which resulted between self-employed and employed [professionals], due to the expenses which the self-employed person would continue to incur.

The Appellant also noted that there had been no one to serve her clients when she was off work due to her injuries. She had no choice but to give up part of her practice, in order to allow her sufficient time to recuperate from her accident-related injuries. When her practice was reduced, and she dropped one-third of her [client load], many of her clients had to get new [professionals] and it was a difficult process when she was ready to go back to work. She argued that the

process of going back to work was also made more difficult as she no longer had a client base. The Appellant maintains that both the IRI benefits she received until November 24, 2004 and the top-up which she received afterwards, failed to take this into consideration. The Appellant also submitted that MPIC erred in selecting the date at which to begin the 30% reduction of net income upon her return to part-time employment.

Counsel for MPIC submits that the case manager relied upon the MPIC Act and Regulations when calculating the Appellant's GYEI and IRI benefits. Self-employed individuals are noted and taken into consideration under this scheme. Counsel noted that the Appellant's actual net income was approximately $47,000, resulting from her gross income of $75,000. In actuality, her GYEI, calculated in accordance with the MPIC Act and Regulations was set at a higher rate than this, at over $76,000, and the Appellant had been properly compensated under the Statute. All proper deductions had been accounted for, and the 30% reduction of net income began on the correct date of November 24, 2004. She argued that the Appellant failed to provide any evidence that these benefits had not been calculated correctly.

The onus is on the Appellant to show, on a balance of probabilities, that the IRI benefits which she received were not calculated correctly. The Commission has reviewed the documentation on the Appellant's file, as well as her testimony and submissions at the hearing and the submission of counsel for MPIC. The Commission finds that the Appellant's case manager correctly followed the prescribed methods under the MPIC Act and Regulations for computing GYEI for self-employed individuals.

The Appellant's GYEI was correctly calculated, having regard to Manitoba Regulation 39/94. Section 3(2) of that Regulation provides that a victim's GYEI derived from self-employment is

the greater amount of business income that the victim received or is entitled to for specific periods, or the amount as determined according to Schedule C. In this case, Schedule C of the Regulation was utilized as it provided the greater GYEI upon which to base the Appellant's IRI benefits – that of a Level 2 [professional]. This resulted in a GYEI of $76,194, which was greater than the Appellant's business income of $40,112.57. Pursuant to Section 111(1) of the MPIC Act, the Appellant is then entitled to an IRI equal to 90% of net income computed on a yearly basis.

As counsel for MPIC pointed out, this application of the legislation resulted in recognition of the Appellant's self-employed status as a Level 2 [professional]. The Appellant failed to provide evidence to establish that her benefits were incorrectly calculated, having regard to the MPIC Act or Regulations.

Accordingly, the Commission finds that the Appellant's GYEI and IRI benefits were correctly assessed and calculated. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated March 14, 2005 is confirmed.

2. Entitlement to Income Replacement Indemnity Benefits beyond July 11, 2005

The Appellant advised that because of her pain symptoms, she had to reduce her practice by one-third. She was not able to work, but did the best that she could to service her ongoing clients as best as possible so that she could continue practicing. She tried working seven days a week, during every hour which she could, despite her pain, to keep her practice going. The Appellant explained that when her IRI benefits were decreased and eventually terminated, she was still not practicing as she had before the motor vehicle accident. She was in significant pain and using

medication. She could not sleep. She did the best she could to manage her clients but eventually she lost her entire practice in April 2007 as she was simply unable to continue with the workload.

The Appellant submitted that on July 12, 2005 she was still not able to work at her pre-motor vehicle accident level because of her pain. Before the motor vehicle accident she had worked eighty (80) hours per week and afterwards it was difficult to manage thirty-five (35). This inability to work continued until the present time. The Appellant submitted that the Internal Review Decision did not consider that in July 2005 she still needed to take muscle relaxants to be able to sleep. The Internal Review Officer forgot to take into consideration the amount of additional medication such as Endocet that she had to take in order to practice, and the fact that she had to continue with pain block injections. She submitted that prior to the accident in October 2004, she never even had to take a sleeping pill. The need to take the medication was due to the motor vehicle accident and impaired her ability to work as a [professional].

The Appellant also submitted that her difficulties with the [Appellant's professional licensing body], which also interfered with her ability to work, arose as a result of the motor vehicle accident. It was the accident which led to her appearance at the Commission for a pre-hearing meeting, and the resulting difficulties with the [Appellant's professional licensing body] which prevented her from practising during certain periods.

Counsel for MPIC reviewed [Independent Doctor's] report of February 18, 2005. She submitted that following an examination and assessment of the Appellant, he found no physical impairment such as loss of functional range of motion or obvious structural changes as a result of the motor vehicle accident. He concluded there was no physical impairment that would:

1. preclude the performance of essential work tasks

2. preclude travel to and from the workplace
3. be adversely affected by a return to work
4. provide a safety hazard to the claimant or those in her immediate surrounding.

He classified the Appellant as full function with symptoms.

A further report from [Independent Doctor] dated June 10, 2005 confirmed his opinion that the Appellant would be classified as full function with symptoms, with her dysfunction a function of her pain and not associated with any physical impairment.

Counsel for MPIC also noted that from April 2007 to March 2008 the Appellant was able to work up to 12 hours per day and often took work home to do throughout the evening. She had testified she was on call for five straight weeks, despite stating that she had an inability to work continuing until February 2010. She claimed that she was unable to work the hours that she had worked before the motor vehicle accident, yet continued to work extended hours for a year.

After [Independent Doctor] concluded that the Appellant was at full function with symptoms, the Internal Review Officer undertook an extensive review of the weekly hours which had been worked by the Appellant. She went through the relevant legislation and concluded that the Appellant met the requirement of the Regulations that she was substantially able to perform the tasks of her employment. Counsel submitted that the conclusion of the Internal Review Officer should be upheld by the Commission.

The onus is on the Appellant to show, on a balance of probabilities, that she was not able to perform the duties of her pre-accident occupation, as a result of her injuries from the motor vehicle accident, after July 11, 2005. The Commission has carefully reviewed the medical

evidence presented and concluded that while the Appellant may have been reporting some symptoms during that time, the evidence fails to establish that she was not able to work as a result of her injuries. The reports from [Independent Doctor] clearly determine that the Appellant was at full function and that there were no physical impairments resulting from the accident preventing her from working as a [professional].

Although one of her caregivers, the [Appellant's Chiropractor #3], indicated in an initial chiropractic report dated March 10, 2006 that the Appellant's condition resulted in an inability to perform required tasks, he also indicated that the patient was currently at work. The inconsistency in this form, with no narrative explanation to assist does not provide sufficient reliable evidence to contradict [Independent Doctor's] reports and opinions.

Further, the evidence reviewed by the Internal Review Officer and presented at the hearing, confirms the notation that the Appellant was at work. The Internal Review Officer carefully reviewed the number of hours and the list of duties which the Appellant was performing. As well, the evidence of the Appellant was that she did perform some work between October 2004 and July 2005, at an increasing rate, and that between April 2007 and March 2008, she worked long (and hard) hours.

The Appellant was not able to establish that there were any essential duties of her occupation as a [professional] that she was substantially unable to perform during the relevant period or that there were periods when she was unable to work as a result of her motor vehicle accident injuries, for which she was not compensated with IRI benefits.

Accordingly, the Commission finds that the Appellant is not entitled to IRI benefits beyond July 11, 2005. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated September 29, 2005 is confirmed.

3. - Entitlement to funding for more than one anti-inflammatory medication and reimbursement of expenses for non-prescription medications
- Whether top-up IRI benefits were correctly assessed and calculated
- Reimbursement of travel expenses for the purpose of attending a meeting at MPIC
- Reimbursement of expenses for photocopying documents requested by MPIC

The Appellant maintained that she used over the counter medications such as Sleep-EZE D, Spasmhalt, Aspercreme, Advil and herbal baths right after the accident in order to assist with her pain symptoms and provide her with some temporary relief from her pain. When she was finally able to see her family doctor, she was then able to switch to prescription medications. However, the Appellant argues that she continued to use certain non-prescription medications, such as Aspercreme, throughout her claim and these ongoing expenses should be covered by MPIC. Specifically, the Aspercreme (an anti-inflammatory cream) provided her with pain relief, without any side effects. The Appellant claims that her injuries were more serious than an average "whiplash" and necessitated ongoing treatment with these non-prescription medications. The Appellant submits that these medications were all necessary to deal with her pain and sleep difficulties resulting from the motor vehicle accident.

The Appellant disputed the calculation of her IRI "top-up" benefits between January 17, 2005 and February 27, 2005. During this period she was back at work, at approximately 30% of her duties and MPIC was paying IRI benefits for the remainder. However, the Appellant submitted that MPIC failed to consider that a self-employed person still has to continue paying their expenses, and the top-up benefits failed to deal with this.

With respect to her travel expenses for attending a meeting at MPIC, the Appellant submits that she had to attend the meeting at MPIC in order to initiate her bodily injury claim and provide information requested by MPIC. The Appellant argues that her attendance at MPIC was required as part of the claims process and accordingly, the associated travel expenses should be reimbursed.

Similarly, with regards to the photocopy expenses, the Appellant claims that she should be reimbursed for the documents which she had to provide to MPIC in order to establish her experience as a [professional]. She was required to provide further information to MPIC in order to establish her years of practice as a [professional] and her level of experience for the purposes of Schedule C of Manitoba Regulation 39/94. She maintains that since MPIC required the additional information, she should be reimbursed for the photocopy costs associated with providing those documents.

Counsel for MPIC submits that MPIC's decision to reimburse the Appellant's initial expenses for her non-prescription medications is appropriate in this case. She argues that there is no medical evidence substantiating the requirement for these non-prescription medications on a long-term basis. She argues that the Appellant self-diagnosed her requirement for Aspercreme and this medication was never medically required. Further, the herbal baths are not medications and therefore not properly funded by MPIC.

Counsel for MPIC submitted that the Appellant's IRI top-up for this almost six week period had been correctly calculated in accordance with the MPIC Act and Regulation. The Appellant had not provided any evidence to show that these benefits had been calculated incorrectly.

With respect to the Appellant's claim for travel expenses related to her attendance at MPIC for a meeting, counsel for MPIC submits that the MPIC Act and Regulations only provide for reimbursement of travel expense for the purpose of receiving care.

As far as photocopy expenses are concerned, counsel for MPIC argues that regardless of what documents MPIC requests from a claimant, there is simply no section in the MPIC Act or Regulations to provide for coverage for photocopying expenses. Counsel for MPIC therefore submits that the Appellant's appeal should be dismissed and the Internal Review Decision of November 25, 2005 should be confirmed.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that:

1. the Appellant is not entitled to reimbursement of expenses for non-prescription medications including Aspercreme, Sleep-EZE D and herbal baths, beyond her initial expense claim accepted by MPIC;
2. the Appellant's top-up IRI benefits were correctly assessed and calculated;
3. the Appellant is not entitled to reimbursement of expenses for the purpose of attending a meeting at MPIC; and
4. the Appellant is not entitled to reimbursement of expenses for photocopying documents requested by MPIC.

The Commission finds that the Appellant did not establish, on the balance of probabilities that the ongoing use of certain non-prescription medications was required once she obtained

prescription medications for pain relief (which were reimbursed by MPIC). Further, we find that the herbal baths do not qualify as a medication or medical supply within the meaning of the MPIC Act and Regulations and therefore do not qualify for reimbursement.

With respect to whether the Appellant's top-up IRI benefits were correctly assessed and calculated, we find that the Appellant failed to establish that there had been any error regarding the calculation of her IRI benefits. The Appellant did not provide any evidence to show that these benefits had been calculated incorrectly.

Lastly, the Commission finds that there are no provisions in the MPIC Act or Regulations for reimbursement of expenses for photocopying charges or for travel expenses for the purpose at attending a meeting at MPIC.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated November 25, 2005 is confirmed.

4. Entitlement to Reimbursement of Chiropractic Treatment beyond September 16, 2005

At the appeal hearing, the Appellant advised that she continued to see [Appellant's Chiropractor #1], her treating chiropractor until December 2006, when she could no longer afford the treatments. The Appellant testified that chiropractic care provided relief from the pain. She advised that with the manual therapy treatments that the chiropractor applied, she could get a few hours of relief in her upper back. If it wasn't for the chiropractic treatments, her upper back was an impenetrable block. She advised that this was the only pain relief she was getting, even if it was only for a few hours. She explained to the Commission that the manual therapy that the

chiropractor was able to provide her, gave her, at least for a short time, a bit of relief from the knots which were in her back as a result of her motor vehicle accident injuries. The Appellant maintained that although MPIC's chiropractic consultant said she had shown no improvement, the real improvement was that she was able to survive the severe pain.

The Appellant submitted that these chiropractic treatments continued to be medically required beyond September 16, 2005. She maintains that if the treatments hadn't been medically required, her chiropractor would not have continued to see her and provide treatment. She argues that [Appellant's Chiropractor #1] was her primary healthcare provider since the date of the accident and he was advising her to keep coming back for treatments. This continued until she simply couldn't afford his treatments any longer. The Appellant also testified that when she began trigger point injections, she realized much greater benefit from that treatment and this also led to her decision to end the chiropractic treatments.

Counsel for MPIC submitted that chiropractic treatment was not medically required beyond September 16, 2005. Counsel for MPIC relies upon [MPIC's Chiropractor], chiropractic consultant to MPIC Healthcare Services, and his interdepartmental memorandum of August 12, 2005, wherein [MPIC's Chiropractor] advises that:

> I have reviewed the series of reports supplied by [Appellant's Chiropractor #1]. In particular, Treatment Plan Reports dated January 16, 2005 (item #10), April 25, 2005 (item #21), and July 18, 2005 (item #32) were reviewed. There is little change in the claimant's condition as reported by [Appellant's Chiropractor #1] in these reports despite the passage of almost six months. Because of this absence of sustained and significant improvement, further chiropractic treatment would not be considered a medical requirement. It would be considered elective. It would not be likely that further chiropractic treatment would improve her symptoms or her function.

Counsel for MPIC also notes that the Internal Review Officer considered that one of the key considerations in determining whether recommended treatment is "medically required" is

whether there is any real likelihood that it will lead to a demonstrable improvement in the condition of the patient. Counsel for MPIC argues that the Appellant was not realizing any demonstrable improvement with ongoing chiropractic treatments beyond September 16, 2005 and therefore the decision to discontinue funding of those treatments by MPIC was appropriate. Counsel for MPIC therefore submits that the Appellant's appeal should be dismissed and the Internal Review Decision of November 28, 2005 should be confirmed.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for chiropractic treatment beyond September 16, 2005.

Two conditions must be met in order for an Appellant to become entitled to reimbursement of expenses for chiropractic treatment:

1. the expenses must have been incurred to treat injuries sustained in a motor vehicle accident; and
2. the treatments must be "medically required".

The Commission finds that the Appellant failed to establish, on a balance of probabilities, that ongoing chiropractic treatment beyond September 16, 2005 was medically required. In determining whether treatment is medically required, one of the key considerations is whether there is any real likelihood that it will lead of a demonstrable improvement in the condition of the patient. Based upon the Appellant's testimony at the appeal hearing, the Commission finds that while chiropractic treatments continued to provide temporary pain relief for the Appellant,

ongoing chiropractic treatment did not improve her underlying condition. We also note that according to [MPIC's Chiropractor's] memorandum of August 12, 2005, there was little change in the Appellant's condition as reported by [Appellant's Chiropractor #1] in his reports. We accept [MPIC's Chiropractor's] opinion that due to the absence of sustained and significant improvement in the Appellant's condition, further chiropractic treatment would not be considered a medical requirement and would be considered elective. As a result, we are unable to conclude that chiropractic treatment beyond September 16, 2005 was medically required in this case.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of chiropractic expenses beyond September 16, 2005. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated November 28, 2005 is confirmed.

5. Entitlement to Reimbursement of Expenses - Eye Examination, Eyeglasses and Travel Expenses

The Appellant submitted that the change in her eyeglass prescription was related to the motor vehicle accident and therefore MPIC should reimburse her for her expenses related to her eye examination with [Appellant's Optometrist], her new prescription eyeglasses and her travel expenses.

Counsel for MPIC argued that there was no medical information to substantiate that the change in the Appellant's eyeglass prescription was related to the motor vehicle accident.

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal,

and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for her eye examination, eyeglasses and travel expenses related thereto. The Commission finds that there is simply no medical information on the Appellant's file to support that her prescription or vision changed as a result of injuries sustained in the motor vehicle accident of October 26, 2004. As a result, we are unable to conclude that the expenses incurred relating to the Appellant's eye examination and prescription eyeglasses were required as a result of the motor vehicle accident.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of expenses for the eye examination, eyeglasses and travel expenses related thereto. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated June 13, 2006 is confirmed.

6. Reimbursement for Expenses for Active Release Technique ("ART") Therapy

At the appeal hearing, the Appellant indicated that she continued ART therapy with [Appellant's Chiropractor #3] until October 2006, when she could no longer afford the treatment. The Appellant testified that the ART therapy was beneficial because the manual therapy worked her muscles and moved the "knots" in the muscles. She indicated that she found ART therapy to be a different treatment (than chiropractic), using force to push the muscles apart. The main benefit of this treatment was that the muscles were able to be moved. Together with the trigger point injections she later received (which numbed the muscles for a period of time), she felt she gained some freedom of movement and was able to gain some strength. She felt this was needed to revive her muscles and to put blood flow back; if the muscles were not moved in this way it would lead to a deterioration in her base line condition. She further advised that when she

undertook ART therapy, she was able to reduce the amount of pain medication that she was taking. Additionally, she continued the ART therapy with [Appellant's Chiropractor #3] because he was telling her that it was medically required.

Counsel for MPIC relied upon the opinion of [MPIC's Chiropractor] set out in his file review of June 15, 2006 wherein [MPIC's Chiropractor] noted that:

> This claimant has had extensive ART treatment. In my opinion further treatment of the same kind is not likely to provide much benefit, since despite all the ART therapy, she continues to report high levels of symptoms.

Counsel for MPIC therefore submits that given the extensive therapy which the Appellant had undergone since the accident, further ART therapy would not likely result in any demonstrable improvement to the Appellant's condition.

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for ART therapy beyond June 23, 2006. The Commission finds that the Appellant has not established, on a balance of probabilities, that ongoing ART therapy beyond June 23, 2006 would result in any demonstrable improvement in her condition. We accept [MPIC's Chiropractor's] opinion that further treatment of the same kind would not likely provide much benefit since, despite all the ART treatment to date, she continued to report high levels of symptoms. As a result, we are unable to conclude that ongoing ART therapy was medically required in this case.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of expenses for ART therapy beyond June 23, 2006. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated August 11, 2006 is confirmed.

7. Entitlement to Reimbursement of the Cost of a TENS Machine

At the appeal hearing, the Appellant submitted that she purchased the TENS machine on the advice of [Appellant's Doctor #2]. She maintains that [Appellant's Doctor #2] prescribed the TENS machine, so therefore it is medically required. She argues that [Appellant's Doctor #2] suggested it to her, so she would not have to rely as much on active treatments. The Appellant submits that it is not an elective treatment if [Appellant's Doctor #2] recommends it. She maintains that [Appellant's Doctor #2's] recommendation and request for this equipment renders the equipment medically required in her particular case.

Counsel for MPIC submits that the TENS machine is an elective therapy and not medically required. Counsel for MPIC relies upon the opinion of [MPIC's Doctor], Medical Consultant with MPIC's Healthcare Services Team. In her memorandum dated August 11, 2006, it was [MPIC's Doctor's] opinion that a TENS unit may be of some help, however, it was not medically required. Section 5 of Manitoba Regulation 40/94 provides that MPIC shall pay an expense incurred by a victim for the purpose of receiving medical or paramedical care when that care is "medically required". Counsel for MPIC submits that since the TENS unit is elective, it is not medically required and accordingly MPIC is not obligated to fund that expense.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission

finds that the Appellant is not entitled to reimbursement of the cost of a TENS machine. The Commission finds that a TENS machine is an elective treatment option and not medically required in the circumstances of this case.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of the cost of a TENS machine. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated October 17, 2006 is confirmed.

8. Entitlement to Reimbursement of Expenses for a Contoured Pillow and for Trigger Point Injections

At the appeal hearing, the Appellant testified that the trigger point injections provided her with the best form of pain relief. The Appellant described the dramatic changes in her pain which she experienced following trigger point injections. She noted that this only lasted for a short time, for perhaps four to five days, but she was finally able to get some relief. She submitted that the specialists who treated her would not have continued to see her if the treatments were not medically required. She maintained that if the specialists hadn't determined that there was an ongoing injury that needed treatment, they would not have continued to treat her. The Appellant argued that even though the trigger point injections do not provide lasting pain relief, the relief that these treatments do provide helps her to function. She advises that the injections numb the muscles and she is able to obtain relief from the pain. Although it is not a cure, it blocks the pain so that a person can function.

With respect to the requirement for the contoured pillow, the Appellant testified that she purchased the contoured pillow at [Appellant's Doctor #2's] office on his recommendation, in order to assist with her sleep. She maintains that it was a reasonable request and that

[Appellant's Doctor #2] provided his opinion that she could benefit from a contoured pillow to assist with sleep. At her appeal hearing, the Appellant described her neck as sitting like a cradle on the contoured pillow so that her neck muscles could get some relief, instead of being in constant tension and pressure. The Appellant therefore submits that the contoured pillow was medically required for the treatment of her motor vehicle accident-related injuries.

Counsel for MPIC argued that trigger point injections were not medically required beyond January 19, 2007. Counsel for MPIC relies upon the opinion of [Appellant's Doctor #2] who commented that it was his impression that the Appellant was not improving with ongoing trigger point injections. Counsel for MPIC also relies upon [MPIC's Doctor's] opinion (as set out in the Internal Review Decision) that the available information does not support that the Appellant derives a benefit of a lasting nature from continued trigger point injections. As a result, counsel for MPIC argued that trigger point injections are an elective treatment and not medically required in accordance with the MPIC Act and Regulations. Therefore the decision to terminate funding of those treatments should be confirmed.

With respect to reimbursement of the cost of a contoured pillow, counsel for MPIC submits that [Appellant's Doctor #2's] note that a "contoured pillow would be helpful for her neck and shoulder pain" does not meet the test of medical necessity or medically required pursuant to the MPIC Act and Regulations. Although the use of the pillow is supported by [Appellant's Doctor #2], counsel for MPIC argues that [Appellant's Doctor #2's] opinion does not go far enough to suggest that the pillow is medically required. Further, she maintains that there is no other medical information to support that the use of a contoured pillow is medically required as a medical expense or as rehabilitation expense. Therefore, counsel for MPIC maintains that the decision to not approve funding of a contoured pillow by MPIC was appropriate. Counsel for

MPIC therefore submits that the Appellant's appeal should be dismissed and the Internal Review Decision of April 18, 2007 should be confirmed.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of expenses for trigger point injections beyond January 17, 2007, or, for a contoured pillow.

The Commission finds that ongoing trigger point injections were an elective treatment option and not medically required in the circumstances of this case. The Commission finds that the Appellant has not established, on a balance of probabilities, that ongoing trigger point injections beyond January 19, 2007 would result in any demonstrable improvement in her condition. As a result, we are unable to conclude that ongoing trigger point injections were medically required in this case. With respect to the contoured pillow, the Commission finds that the contoured pillow is an elective treatment option and not medically required in the circumstances of this case.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of the expenses for trigger point injections beyond January 19, 2007 or for the cost of a contoured pillow. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated April 18, 2007 is confirmed.

9. Entitlement to Reimbursement of Medication – Temazepam

At the hearing of her appeal, the Appellant explained that initially the Flexeril which was prescribed helped with her sleep. However, when that stopped working, and she hadn't slept for days, [Appellant's Doctor #2] prescribed Temazepam. She began taking this in the fall of 2006 and used it every night, finding that it greatly helped her sleep.

She continued to take this medication, even after MPIC cut off funding for it, until [Appellant's Doctor #4] replaced it with another medication, Triazolam, which she continued to take to assist her with her sleep issues until November of 2009, when she was able to wean off of it. The Appellant explained that her difficulties with pain and sleep dysfunction arising out of the motor vehicle accident caused her to require the use of this medication in order to sleep.

Counsel for MPIC submitted that the Temazepam was prescribed by [Appellant's Doctor #2] as a short term trial and was not advised or intended for long term use. Further, she submitted that the Appellant's sleep dysfunction was impacted by other issues unrelated to the motor vehicle accident.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is entitled to reimbursement of the cost of the medication Temazepam. In his report of June 4, 2007, [Appellant's Doctor #2] indicates that the medication Temazepam continues to be medically required for the Appellant. Although her sleep had improved, we note the Appellant's testimony that she continued to have difficulties throughout her claim with her

sleep. The Commission accepts the Appellant's testimony that she continued to need a sleep aid throughout this time. The Commission accepts the opinion of [Appellant's Doctor #2] and the Appellant's submission that the medication Temazepam continued to be medically required for the Appellant.

Accordingly, the Commission finds that the Appellant is entitled to reimbursement of the cost of the medication Temazepam. As a result, the Appellant's appeal is allowed and the Internal Review Decision dated August 9, 2007 is rescinded.

10. <u>Entitlement to reimbursement of Medication – Spasmhalt</u>

At the appeal hearing, the Appellant explained that the Spasmhalt had helped her with her pain and that she had not had any side effects or bad reactions to it. After MPIC discontinued payment for the Spasmhalt, she continued to purchase it (at her own expense) for another two months until [Appellant's Doctor #4] prescribed the medication Baclofen for her pain symptoms.

Counsel for MPIC submitted that [Appellant's Doctor #4] only noted that this medication was helpful, but that the Appellant had not established that it was medically required.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is entitled to reimbursement of the cost of the medication Spasmhalt from June 1, 2008 to July 4, 2008.

[MPIC's Doctor], in her file review of July 15, 2008, accepted that on balance, the Baclofen was being prescribed for soft tissue pain which temporally related to the motor vehicle accident and approved the reimbursement of Baclofen for the Appellant. The Commission finds that the Appellant would have continued to require medication for her pain complaints for the period from May 31, 2008 (when MPIC discontinued funding for Spasmhalt) until July 4, 2008 when she was started on Baclofen. As a result we find that the Appellant should be reimbursed for the cost of the medication Spasmhalt used for her pain complaints during that interval from June 1, 2008 to July 4, 2008.

Accordingly, the Commission finds that the Appellant is entitled to reimbursement of the medication Spasmhalt from June 1, 2008 to July 4, 2008. As a result, the Appellant's appeal is allowed and the Internal Review Decision dated June 13, 2008 is rescinded.

11. Entitlement to reimbursement for travel expenses associated with attending for psychotherapy treatment

The Appellant submitted that the requirement for psychological counselling arose as a result of the motor vehicle accident, which had precipitated her attendance at the Commission for a pre-hearing meeting and led to her difficulties with the [Appellant's professional licensing body]. She noted that [Appellant's Doctor #4], in a report dated February 24, 2009 had diagnosed her with a "significant Anxiety disorder where her main symptoms are insomnia and night terrors". [Appellant's Doctor #4] noted that:

> ...the source of her anxiety and other psychological symptoms are possibly pre-existing and exacerbated by the loss of her career as a [professional]. [The Appellant] continues to have ongoing neck pain which she relates to a previous MVA in 2004.

The Appellant maintained that all of her difficulties with pain, stress, anxiety and employment stemmed from the sequence of events which began with the motor vehicle accident, continued through her attendance at the pre-hearing meeting at the Commission, and resulted in her suspension from practice with the attendant restrictions imposed by the [Appellant's professional licensing body].

Counsel for MPIC submitted that these expenses were related not to the motor vehicle accident, but rather to anxiety connected to the Appellant's issues with the [Appellant's professional licensing body], which had imposed a requirement for psychological counselling upon the Appellant.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of travel expenses associated with attending for psychotherapy treatment.

The Commission finds that the Appellant's attendances at psychotherapy treatment arose out of a disciplinary matter with the [Appellant's professional licensing body] and not the motor vehicle accident of October 26, 2004. The Commission agrees with the conclusion of the Internal Review Officer that the Appellant's need to attend for psychological assessment and psychotherapy treatment related to the restrictions on her license to practice [her profession] in Manitoba imposed by the [Appellant's professional licensing body] and not the injuries sustained in the motor vehicle accident.

Accordingly, the Commission finds that the Appellant is not entitled to reimbursement of travel expenses associated with attending for psychotherapy treatment. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated April 1, 2009 is confirmed.

12. Entitlement to reimbursement for travel expenses and for the medications - Triazolam, Quetiapine and Lorazepam

The Appellant submitted that her attendances with [Appellant's Doctor #3], [Appellant's Doctor #2] and [Appellant's Doctor #4] were all related to the motor vehicle accident. Specifically with respect to [Appellant's Doctor #2], her travel expenses related to trigger point injections. With respect to [Appellant's Doctor #4], the Appellant argued that although [Appellant's Doctor #4] reported that the visits were anxiety related, the Appellant maintains that her anxiety and stress resulted from a series of events which had their origin with the motor vehicle accident. As a result, the Appellant argues that her travel expenses should be reimbursed by MPIC.

At the appeal hearing the Appellant advised that [Appellant's Doctor #4] had switched her to Triazolam from Temazepam in fall 2008 for her sleep dysfunction. She continued to use Triazolam as a sleep aid until November 2009, when she was able to wean herself off of that medication. With respect to Lorazepam, the Appellant advised that [Appellant's Doctor #4] prescribed the Lorazepam for stress and anxiety in 2008 due to the issues she was experiencing with the [Appellant's professional licensing body] . She also emphasized that these medications would not have been necessary had she not been injured in the motor vehicle accident, which led to her encounter at the pre-hearing meeting at the Commission and her suspension from [her] practice [text deleted], with all the attendant stress involved. The Quetiapine was also an anxiety medication which she was originally prescribed to help her deal with the stress and anxiety in her

life. However, the Appellant testified that she did not tolerate this medication and she was therefore switched to the Lorazepam.

Counsel for MPIC submitted that the Appellant's travel expenses did not qualify for reimbursement by MPIC. She maintains that since the Appellant was not entitled to reimbursement of her expenses for trigger point injections, the corresponding travel expenses do not qualify for reimbursement either. With respect to the travel expenses for visits to [Appellant's Doctor #4], counsel for MPIC argues that these expenses were not related to the motor vehicle accident, but rather to anxiety connected to the Appellant's issues with the [Appellant's professional licensing body], and therefore do not qualify for reimbursement.

With respect to the Triazolam, counsel for MPIC submits that the evidence was unclear as to whether the Appellant required this medication as a sleep aid due to her pain symptoms or, whether it was related to the stress of the proceedings with the [Appellant's professional licensing body]. With respect to Lorazepam and Quetiapine, counsel for MPIC argues that these anti-anxiety medications were not related to the motor vehicle accident, but rather to anxiety connected to the Appellant's issues with the [Appellant's professional licensing body], and therefore do not qualify for reimbursement

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that:

1. the Appellant is entitled to reimbursement of the cost of the medication, Triazolam;

2. the Appellant is not entitled to reimbursement of the cost of the medications, Quetiapine or Lorazepam;
3. the Appellant is not entitled to reimbursement of her travel expenses associated with attending [Appellant's Doctor #2] for elective trigger point injections or [Appellant's Doctor #4] and [Appellant's Doctor #3] for appointments not related to the motor vehicle accident.

The Commission finds that the Triazolam, a sedative, was used to assist the Appellant with her sleep dysfunction. The Appellant had been using a sleep aid since February 2006, and the Commission finds that on the balance of probabilities, her sleep dysfunction continued to be related to the motor vehicle accident. Therefore, the Commission finds that the Appellant is entitled to reimbursement of the cost of the medication Triazolam.

With respect to the medications Quetiapine and Lorazepam, the Commission finds that those medications were prescribed for stress and anxiety relating to the events surrounding the Appellant's disciplinary hearings with the [Appellant's professional licensing body]. As a result, the Commission finds that those medications were not prescribed for injuries caused by the motor vehicle accident. Accordingly, the Appellant is not entitled to reimbursement of the cost of the medications Quetiapine and Lorazepam.

The Commission finds that the Appellant is not entitled to reimbursement of travel expenses related to medical attendances for elective treatments or for medical conditions not related to injuries sustained in the motor vehicle accident. Having determined that the trigger point injections with [Appellant's Doctor #2] beyond January 19, 2007 were an elective treatment option and not medically required in the circumstances of this case, the Commission finds that

the Appellant is not entitled to reimbursement for travel expenses associated with those attendances. Further, the Commission finds that the Appellant's attendances with [Appellant's Doctor #4] for anxiety medications related to the events surrounding the Appellant's disciplinary hearings with the [Appellant's professional licensing body] and not to the motor vehicle accident. As a result, those travel expenses do not relate to injuries sustained in the motor vehicle accident.

Accordingly, the Commission finds that:

1. the Appellant is entitled to reimbursement of the cost of the medication Triazolam;
2. the Appellant is not entitled to reimbursement of the cost of the medications Quetiapine and Lorazepam; and
3. the Appellant is not entitled to reimbursement of her travel expenses associated with attending [Appellant's Doctor #2] for elective trigger point injections or [Appellant's Doctor #4] and [Appellant's Doctor #3] for appointments not related to the motor vehicle accident.

As a result, the Appellant's appeal is allowed with respect to the medication Triazolam and is dismissed with respect to the medications Quetiapine and Lorazepam and the claim for travel expenses. The Internal Review Decision dated June 10, 2009 is therefore varied accordingly.

13. Entitlement to reimbursement of expenses associated with attending [Appellant's Doctor #5]

The Appellant sought reimbursement for travel expenses associated with receiving cranial acupuncture and prolotherapy from [Appellant's Doctor #5] and with attending upon [Appellant's Doctor #5] for trigger point injections. She maintained that the trigger point

injections provided her with the best form of pain relief and accordingly she continued to pursue this form of treatment to manage her ongoing pain symptoms.

Counsel for MPIC submits that the Appellant's travel expenses for treatments with [Appellant's Doctor #5] do not qualify for reimbursement by MPIC. She maintains that since the Appellant was not entitled to reimbursement of her expenses for trigger point injections, the corresponding travel expenses do not qualify for reimbursement. Further, cranial acupuncture and prolotherapy are elective treatments, which were not medically required and therefore the corresponding travel expenses do not qualify for reimbursement.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of her travel expenses for attendances with [Appellant's Doctor #5] for trigger point injections, cranial acupuncture or prolotherapy.

The Commission finds that the Appellant is not entitled to reimbursement of travel expenses related to medical attendances for elective treatments. Having determined that the trigger point injections beyond January 19, 2007 were an elective treatment option and not medically required in the circumstances of this case, the Commission finds that the Appellant is not entitled to reimbursement for travel expenses associated with attendances with [Appellant's Doctor #5] for trigger point injections, cranial acupuncture or prolotherapy.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated October 26, 2009 is confirmed.

14. Entitlement to reimbursement for travel expenses for attending [Appellant's Doctor #6]

At the appeal hearing, the Appellant emphasized that she had been fortunate that [Appellant's Doctor #6] had provided her with the trigger point injections so essential to relieve her pain, without charging her for them. However, she felt that MPIC should be responsible for paying her travel and mileage costs associated with that treatment. She noted that in February 2010, she had been rear-ended in another motor vehicle accident. Since that time [Appellant's Doctor #6] had continued with pain block injections, until July of 2010, and that MPIC had been providing her with travel and mileage costs associated with that treatment.

Counsel for MPIC submits that the Appellant's travel expenses for treatments with [Appellant's Doctor #6] do not qualify for reimbursement by MPIC. She maintains that since the Appellant was not entitled to reimbursement of her expenses for trigger point injections, the corresponding travel expenses do not qualify for reimbursement.

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of her travel expenses for attending for trigger point injections with [Appellant's Doctor #6].

The Commission finds that the Appellant is not entitled to reimbursement of travel expenses related to medical attendances for elective treatments. Having determined that the trigger point injections beyond January 19, 2007 were an elective treatment option and not medically required

in the circumstances of this case, the Commission finds that the Appellant is not entitled to reimbursement for travel expenses associated with attendances with [Appellant's Doctor #6] for trigger point injections.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated October 26, 2009 is confirmed.

Dated at Winnipeg this 21st day of December, 2010.

YVONNE TAVARES

LAURA DIAMOND

MARY LYNN BROOKS