

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-34**

PANEL: Ms Laura Diamond, Chairperson
Ms Leona Barrett
Ms Deborah Stewart

APPEARANCES: The Appellant, [text deleted], was represented by Ms Laurie Gordon of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: January 31, 2011

ISSUE(S): Whether the Appellant's current symptoms are related to the motor vehicle accident of November 7, 2011.

RELEVANT SECTIONS: Sections 70(1) and 71 of The Manitoba Public Insurance Corporation Act ('MPIC Act')

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

Reasons For Decision

The Appellant was injured in a motor vehicle accident on November 7, 2001. He sought care from physicians in both Manitoba and Saskatchewan.

It was noted that the Appellant had a degenerative back condition which pre-existed the motor vehicle accident. He was diagnosed with cervical myelopathy.

On April 30, 2004, the Appellant's case manager wrote to him indicating that:

“The medical information on file outlines your medical history as early as December of 1998 indicating that you had a severe C5-6 disc narrowing with anterior and posterior osteophytes, appearing to decrease the AP diameter of the cervical canal at that level. A CT scan of the cervical spine in January 1999 further revealed evidence of a central posterior disc along the inferior margin of the C4 level, extending almost five millimetres posterior to the body. At the C5- level, some compromise of the spinal canal was noted related to a large posterior osteophyte along the superior end plate of C6.

Our Health Care Services Team, after reviewing all the medical information on file, has provided an opinion that your current complaints relate to your pre-existing spinal cord condition.”

The case manager concluded that as the Appellant’s current complaints were not related to a condition resulting from the motor vehicle accident, MPIC was unable to provide coverage for treatment expenses and other benefits to the Appellant.

The Appellant sought an Internal Review of this decision.

On January 30, 2006, an Internal Review Officer for MPIC upheld the case manager’s decision.

The Internal Review Officer reviewed the Appellant’s file including medical information from [MPIC’s Doctor], a medical consultant with MPIC’s Health Care Services Team. The Internal Review Officer stated:

“[MPIC’s Doctor] has done a thorough review of your clients’ pre-accident and post-accident medical information. Your client’s pre-accident difficulties were extensive and serious involving his c-spine. [Appellant’s Doctor #1], who your client saw after the accident, provided an opinion that he was symptom free prior to the motor vehicle accident, however, this information was clearly based on your client’s report and not with any review of your client’s pre-accident medical information. She notes that there is no support for an abrupt or acute aggravation or acceleration of your client’s natural baseline/course of his pre-accident condition. As a result, [MPIC’s Doctor] concludes that your client’s current neurologic presentation does not relate to the motor vehicle accident of November 2001. After my review of [MPIC’s Doctor’s] report, I agree with her. You have not been able to provide any information that contradicts [MPIC’s Doctor’s] conclusions and as a result, I am confirming the case manager’s decision and dismissing your client’s Application for review.”

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant did not testify at the hearing into his appeal. However, the Appellant submitted medical reports from his general practitioners at the [text deleted] Medical Clinic, as well reports from [Appellant's Doctor #1] at the [text deleted] Health Centre.

There were also reports filed from neurosurgeons, [Appellant's Neurosurgeon #1], [Appellant's Neurosurgeon #2] and [Appellant's Neurosurgeon #3], as well as independent assessments provided by [Independent Doctor].

Counsel for the Appellant did not dispute that the Appellant did have a pre-existing back condition, involving stenosis as well as disc protrusion, prior to the motor vehicle accident. However, she took the position that the Appellant's cervical myelopathy was accelerated or exacerbated by the motor vehicle accident.

Counsel noted that in the period before the motor vehicle accident (particularly when looking at medical records between December 1998 and August 2000) the Appellant, although diagnosed with a back condition, did not have to attend for medical treatment more than approximately seven times.

Following the motor vehicle accident, the Appellant sought treatment in a timely manner from [Appellant's Doctor #1]. [Appellant's Doctor #1] set out objective findings such as a decreased range of motion and spasms in the Appellant's neck. He referred the Appellant to [Appellant's Neurosurgeon #1] who examined, treated and operated upon the Appellant, performing an

anterior C4-5 discectomy, decompression of the spinal cord and application of cervical cage on May 7, 2003. In a report dated July 30, 2003, [Appellant's Neurosurgeon #1] stated that he had not been aware of the fact that the Appellant was "unemployable since the age of 28 due to his pre-existing arthritic condition".

However, he did comment regarding the causation of the Appellant's symptoms:

"If the history is that he has been having significant neck pain shortly after the 2001 traffic accident, it would be reasonable to accept that fact that the traffic accident likely started the process of neck injury which ultimately resulted in the disc protrusion and the surgery. If on the other hand he did not have any significant symptoms after the traffic accident and developed the symptoms more than a year after the accident, then it becomes more difficult to make a direct correlation of the traffic accident to the cervical disc protrusion. We do not have any other injury on record as a precipitating factor for his symptoms."

[Appellant's Doctor #1] provided several reports and on December 10, 2003 he indicated:

"I think that it is important to realize that this gentleman did have osteoarthritis in his neck, which undoubtedly did pre-exist the accident. He was symptom free prior to the accident. I suspect that had he not had the accident he would have remained symptom free for a considerable length of time. It is difficult to say how long this would have been. It is fair to say that had he not had the accident he may well have eventually developed symptoms of numbness and pain in his hands and limbs and indeed may well have required the surgery that he has had in May of this year at some point down the road if had not had the accident. I do feel that this accident undoubtedly did accelerate the requirement for surgery and indeed probably has caused him to now end up being a quadriplegic in a wheelchair because of a direct effect of swelling and inflammation which would of happened after the accident."

Counsel also reviewed the reports of [Independent Doctor]. [Independent Doctor] noted, on April 20, 2010, that there may not be enough detailed clinical data available to allow a conclusion that the Appellant's symptoms are similar to those reported on the pre-accident basis.

He stated:

"Thus [the Appellant] had a longstanding history of cervical stenosis and cervical myelopathy that predates the accident. On the balance of probability, his current condition is not caused by the motor vehicle accident, but the motor vehicle accident may have accelerated the clinical deterioration experienced by the patient and documented by

[Appellant's Doctor #1] and [Appellant's Neurosurgeon #1]. I am in agreement with the statement of [Appellant's Neurosurgeon #3], in case of a cervical stenosis and clinical evidence of a myelopathy, even a minor cervical trauma may result in a deterioration of the clinical condition of the patient. The comments of [MPIC's Doctor] (April 20, 2004) are generally quite pertinent, but in my opinion the clinical data available are not detailed enough to allow a conclusion "the symptoms are not dissimilar to those reported on the pre-accident basis". Finally, I cannot concur with [Appellant's Neurosurgeon #2] that "this is the region that is indicated as being the cause of his accident sustained in November 2009, and again "I have no doubt that this is direct result of his accident and is not related to degenerative changes in the cervical spine" (January 17, 2006). While the statement of [Appellant's Neurosurgeon #2] (November 4, 2008) that "this patient's symptoms are related to his injury" may be true, I do not concur that the progressive cervical myelopathy was the direct result of his accident. Once again, the balance of probability is that the accident might have accelerated or exacerbated the pre-existent cervical myelopathy."

Counsel submitted that both [Appellant's Neurosurgeon #3] and [MPIC's Doctor] recognized that minor trauma could have caused a deterioration in the Appellant's status but counsel also submitted that an accident where the Appellant had a fall on August 23, 2002 did not cause his degeneration or the rapid deterioration of his symptoms after the motor vehicle accident. For example, the evidence showed that soon after the motor vehicle accident the Appellant had difficulty even walking.

Accordingly, counsel submitted that the medical evidence on file supported a conclusion that the Appellant's back conditions, including cervical myelopathy was accelerated or exacerbated by the motor vehicle accident of November 7, 2001.

Evidence and Submission for MPIC:

The panel heard evidence from [MPIC's Doctor], a medical consultant with MPIC's Health Care Services Team.

She described her training and experience, as well as the process which she uses to review an issue of causation on a claimant's MPIC file.

[MPIC's Doctor] testified that she undertook a lengthy review of the Appellant's file in April of 2004. She set out to gather information regarding certain gaps in the Appellant's medical file. For example, there was some information missing regarding the Appellant's pre-motor vehicle accident condition, and during certain periods following the accident.

[MPIC's Doctor] reviewed the conditions of myelopathy and spondylosis and the differences between them. An examination of pre-motor vehicle accident medical documentation regarding the Appellant showed that between December 1998 and December 1999 there was documentation of severe narrowing at the C5-C6 level with osteophytes and an X-ray showing cervical spondylosis with possible stenosis. This was accompanied by reports of increasing pain and numbness in the Appellant's arms and legs.

A CT scan of the Appellant's cervical and mid-back in January 1999 showed degenerative changes, including a posterior disc protrusion and compromise to the spinal canal. The January 25, 1999 CT report was also consistent with neurological signs the Appellant had been reporting and showing, including clonus, hyperreflex Grade 4 weakness and tingling in his hands.

On February 2, 1999, the Appellant was referred to a neurosurgeon and on March 1, 1999, [Appellant's Neurosurgeon #4] examined the Appellant and found neck spasms, and deteriorating limbs dating back over six years, to 1993 or 1994.

[Appellant's Neurosurgeon #4] noted myelopathy, nocturnal cramping, poor ability to abduct the left arm, clonus, hyperreflexive ankles and knees with Grade 4 plus weakness in the knees and ankles as well as weakness in the right arm biceps.

[MPIC's Doctor] described this condition as a serious medical condition, with the potential for a medical emergency if the condition should decompensate quickly. The Appellant was at risk for compression of the spinal cord.

In August of 2000, the Appellant was referred to another neurosurgeon for similar symptoms, but [MPIC's Doctor] testified that she could not tell from the documentation on the Appellant's file whether the Appellant ever saw this doctor.

[MPIC's Doctor] described the natural history of the condition from which the Appellant suffered at this time as variable. The worst case would be full-blown paralysis, but individuals can have symptoms which get worse and better. However, she did note that spondylosis of the bones is progressive, while the impact on the spinal cord can be variable. There does not have to be a traumatic injury for deterioration to occur. Spondylosis does not improve, but rather takes a progressive downward slope.

[MPIC's Doctor] reviewed the mechanism of injury in the November 2001 motor vehicle accident, noting that no claim was initiated until January 2003, 14 months after the motor vehicle accident. However, the Appellant did go to see [Appellant's Doctor #1] in Saskatchewan, approximately three weeks after the motor vehicle accident, complaining of neck pain. The diagnosis was one of whiplash with neck pain shooting into his hands, spasms and decreased range of motion in his neck.

The Appellant was referred to [Appellant's Neurologist #1], and there were many similarities in this presentation to the presentation of the Appellant between 1998 and 2000. This time, the Appellant was also diagnosed as suffering from whiplash. But [Appellant's Doctor #1] also had a high index of suspicion regarding the Appellant's significant underlying condition and sought assistance from a neurologist.

[MPIC's Doctor] reviewed the Appellant's treatment through to 2002. January 14, 2002 was the last time the file showed that the Appellant had mentioned symptoms in his hands and legs.

[MPIC's Doctor] testified that in February and March 2002, the documents were silent regarding the Appellant's myelopathic condition and it was difficult to tell what had occurred during this gap.

Then, in August of 2002 the file showed that the Appellant reported that he had fallen in a back alley and struck his forehead and cheek. There was also a laceration, which may have resulted from a cut from a beer bottle, which was sutured.

In September 2002, the Appellant was diagnosed with restless leg syndrome. In October of 2002, a cardiac event occurred which caused concern.

When asked whether the fall of 2002 could have exacerbated the Appellant's myelopathic condition, [MPIC's Doctor] replied that yes, a blow to the head in whatever form, that was significant enough to cause lacerations requiring stitches, is a force significant enough to cause deterioration in a person who has an underlying condition.

[MPIC's Doctor] noted that by January 10, 2003, [Appellant's Doctor #1] was reporting that the Appellant could not use his legs, and needed a walker and a wheelchair. The referral to [Appellant's Neurosurgeon #1] was again set in motion. [Appellant's Neurosurgeon #1] saw him in April of 2003. The Appellant complained of tingling since the motor vehicle accident. The history taken by [Appellant's Neurosurgeon #1] noted that in the previous seven months (since the fall of 2002, [MPIC's Doctor] estimated) the Appellant had developed difficulty walking and periods of incontinence.

[MPIC's Doctor] reviewed medical reports leading up to the Appellant's surgery for disc decompression of the spinal cord on May 7, 2003.

[MPIC's Doctor] also noted that the Appellant would not necessarily have needed another injury, either through the motor vehicle accident or through the fall of August 2002, to cause the deterioration which he had suffered. This could have occurred as a result of the natural history of his condition, without any sort of trauma. In [MPIC's Doctor's] view, the medical evidence did not show that the Appellant's degeneration and decline was in direct relationship to the motor vehicle accident. She acknowledged that it was a complicated case and that the Appellant's condition was serious, but in her view the totality of the medical evidence did not build a story leading one to conclude that the motor vehicle accident caused, accelerated, or exacerbated the Appellant's condition.

Although some of the other doctors reporting on the file may have expressed the opinion that there was a connection between the Appellant's condition and the motor vehicle accident, [MPIC's Doctor] noted that in some of these instances, the physician had not had possession of all of the medical documentation, including the history in the Appellant's file.

Counsel for MPIC submitted that the Appellant had failed to meet the onus upon him of establishing that the deterioration in his myelopathic condition was, on a balance of probabilities, due to the motor vehicle accident, as opposed to either natural progression of the condition or the fall which he suffered in August of 2002.

Counsel relied upon the evidence and reports of [MPIC's Doctor], as well as the reports of [Appellant's Neurosurgeon #1] and [Independent Doctor], which supported his position. The evidence showed that the Appellant suffered from symptoms of degeneration and myelopathy for years before the motor vehicle accident occurred. He had problems with numbness, weakness, tingling and pain in his limbs, and other symptoms.

The minor motor vehicle accident in 2001 did not cause or accelerate the Appellant's myelopathy to the point of seriousness with which the Appellant presented in January 2003, with difficulty walking.

In fact, counsel noted that the motor vehicle accident was so minor that the Appellant did not even report it to MPIC until 14 months after it occurred.

Even in 1999 and 2000, the Appellant was scheduled for MRI appointments to investigate the difficulties he was having, although he missed some of his appointments.

Counsel suggested that the Appellant's deterioration could be due to arthritic degeneration, a small, congenital spinal canal, or from the fall of August 2002. However, the evidence did not establish that it was due to the motor vehicle accident.

Counsel reviewed the medical reports from [Appellant's Neurosurgeon #2] and [Appellant's Neurosurgeon #3]. [Appellant's Neurosurgeon #3] did not really offer an opinion regarding causation, stating that it was indeterminate and there was only a possible connection, and [Appellant's Neurosurgeon #2] while at first believing it was due to the motor vehicle accident, later concluded that he could not really judge, deferring to [Appellant's Neurosurgeon #1].

Counsel also reviewed [Appellant's Neurosurgeon #1's] reports and the reports of [Independent Doctor].

He noted [MPIC's Doctor's] observation that the Appellant's neurological complaints should have been more acute, persistent and ongoing following the motor vehicle accident, if the motor vehicle accident really had anything to do with the acceleration of his spinal myelopathy. Yet there were not a lot of changes in his condition after the motor vehicle accident, or throughout 2001, until later in 2002. The Appellant attended many doctors for all kinds of things, and it was likely that he would have mentioned myelopathic symptoms had they been alarming to him at that time. Then, besides minor flare ups, there were no real significant problems until the fall of 2002 and the Appellant's deteriorated condition in January of 2003.

Counsel noted that [Independent Doctor] finally concluded that there was not enough clinical data to determine that the Appellant's myelopathy was a direct result of the motor vehicle accident, although he stated that it might have exacerbated or accelerated the condition.

Counsel submitted that while the Appellant's case was a tragic one and that his back condition resulted in a terrible situation, the evidence does not show, particularly when reviewing the evidence of [Independent Doctor] and [MPIC's Doctor], that the Appellant's deterioration was

more probably than not due to the motor vehicle accident itself. Rather, the evidence showed that the Appellant's difficulties were due to the natural progression of his pre-existing myelopathic condition, which can occur without trauma or could have occurred from his fall in 2002.

The onus is on the Appellant to show that, on a balance of probabilities, his condition is a result of the motor vehicle accident. Counsel submitted that the evidence does not exist to support this connection and that the Appellant was not able to meet the onus of showing, upon a balance of probabilities, that the motor vehicle accident was the reason for the deterioration of the Appellant's back condition.

Discussion:

The MPIC Act provides:

Definitions

[70\(1\)](#) In this Part,

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load, or

(b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile; (« dommage corporel causé par une automobile »)

Application of Part 2

[71\(1\)](#) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

Bodily injury to which Part 2 does not apply

[71\(2\)](#) Notwithstanding subsection (1), this Part does not apply to bodily injury that is

(a) caused, while the automobile is not in motion on a highway, by, or by the use of, a device that can be operated independently and that is mounted on or attached to the automobile;

The onus is on the Appellant to show, on a balance of probabilities, that the current symptoms resulting from his back condition were a result of the motor vehicle accident in question.

The panel has reviewed the evidence in the Appellant's file, as well as the testimony of [MPIC's Doctor] and the submissions of counsel for the Appellant and for MPIC.

Both [MPIC's Doctor] (in her evidence and her review dated April 20, 2004), and [Independent Doctor] (in his report dated April 20, 2010), reviewed the Appellant's pre-motor vehicle accident medical history, focusing upon the period beginning in 1998.

The Appellant was seen in December of 1998 for cervical stenosis and pain radiating to the left arm and left side of his face. He also reported pain in his arm and deteriorating numbness of the legs. An X-ray of the cervical spine showed degenerative narrowing of the disc space at C5-6 and osteophytic formation of the end plates at that level.

In 1999, [Appellant's Neurosurgeon #4] reported clonus of both his feet, especially on the right side, hyperflexia and Grade 4 weakness of the hand grip with some tingling. A CT scan performed in January of 1999 showed evidence of a posterior disc protrusion at C4-5 and osteophytic formation at C5-6. Following further visits in February and March 1999, [Appellant's Neurosurgeon #4] reported that the pain in the neck and the situation in the left limbs was deteriorating "now for over six years".

In August of 1999, a consultation with [Appellant's Doctor #2] revealed that the Appellant had been experiencing pain of the left arm, as well as numbness of the legs for approximately two years and that he was reporting cramps, more severe in his right leg. There was weakness of the lower extremities and of abduction of the right arm and hand grip. Clonus and hyperflexia were reported as well. Arrangements were made for an MRI, but due to the Appellant missing appointments, this was not obtained.

A medical assessment report dated August 24, 2001 from the [text deleted] Health Centre was also reviewed. Among other issues, severe disc narrowing at C5-6 with possible cervical stenosis was noted.

A general practitioner who treated the Appellant, [Appellant's Doctor #3], reported on August 29, 2000 that:

“...This gentleman has had difficulty with his left arm as well as pain and numbness in his legs for approximately the last two to two and a half years. On examination he is exhibiting signs of myelopathy. At night he has severe cramps in his right leg and he also has a history of poor abduction of his left arm. He has been off work for approximately 6 to 8 years secondary to some herniated ruptures. He has marked clonus in both legs and hyperreflexia manifested by a grade 3 reflexes upon the right grade 3 minus on the left. This is present in both his ankles and his knees. He also has weakness graded 4+ in his left. The right side is slightly stronger and graded 5-.

I am wondering whether this gentleman has a cervical spinal stenosis. This does not have a good record. He was seen by [Appellant's Doctor #2] and was referred for a MRI but apparently he missed his MRI appointments on six occasions. The MRI department basically had refused to give him another appointment. This gentleman has however recently been seeing me and he is now having increasing problems with clonus and weakness in the right leg.”

The motor vehicle accident occurred on November 7, 2001.

Manitoba Health Records show that the Appellant visited [Appellant's Doctor #4] on November 29, 2001. However, a report from [Appellant's Doctor #4], dated September 4, 2003 indicated that:

“...[The Appellant] indicated that I saw him after he was involved in a MVA. The patient was never seen by myself after his accident. He was seen a couple of weeks later due to refills that he needed. He was not seen by myself for the accident he claims he was involved in...”

A letter dated February 21, 2003 from [text deleted], an [text deleted] with [text deleted] indicated that the Appellant began receiving Saskatchewan assistance on December 6, 2001, but that the Appellant had never advised her that he was in a motor vehicle accident.

The medical records show that the Appellant then made three or four visits to [Appellant's Doctor #1], in [Saskatchewan], in December of 2001. On December 13, 2001, [Appellant's Doctor #1] referred the Appellant to [Appellant's Neurosurgeon #1].

Although the Appellant had an appointment to see [Appellant's Neurosurgeon #1] in January of 2002, he missed that appointment, and [Appellant's Doctor #1] wrote to [Appellant's Neurosurgeon #1] again, in February of 2002, requesting another appointment on referral “due to severe osteoarthritis in the neck”.

[Appellant's Doctor #1] saw the Appellant several times in 2002. In a letter dated December 10, 2003, he indicated that after referring the Appellant to [Appellant's Neurosurgeon #1]:

“...Over the course of the next few months I attended [the Appellant] a number of times for a variety of problems. On each visit he did mention that he was a lot of problems with his hands being numb and this was getting quite bad as time was progressing...”

[Appellant's Doctor #1] also noted:

“I think that it is important to realize that this gentleman did have osteoarthritis in his neck, which undoubtedly did pre-exist the accident. He was symptom free prior to the accident. I suspect that had he not had the accident he would have remained symptom free for a considerable length of time. It is difficult to say how long this would have been. It is fair to say that had he not had the accident he may well have eventually developed symptoms of numbness and pain in his hands and limbs and indeed may well have required the surgery that he has had in May of this year at some point down the road if had not had the accident. I do feel that this accident undoubtedly did accelerate the requirement for surgery and indeed probably has caused him to now end up being a quadriplegic in a wheelchair because of a direct effect of swelling and inflammation which would of happened after the accident.”

As [MPIC’s Doctor] agreed, the motor vehicle accident did cause some difficulty to the Appellant late in 2001, similar to a whiplash injury. However, the panel does not find that this was the cause of the Appellant’s myelopathic condition, which pre-existed the motor vehicle accident.

Nor do we find that the Appellant has shown, on a balance of probabilities, that the motor vehicle accident caused significant exacerbation or acceleration of this condition. The Appellant’s myelopathic condition was present and causing him a great deal of difficulty for a number of years prior to the motor vehicle accident. As noted, difficulties with symptoms from the myelopathic condition were reported by caregivers in 1998 and 1999 and right up until August of 2001.

The Appellant saw his doctor, [Appellant’s Doctor #4], in his home community, a few weeks after the motor vehicle accident, yet made no recorded mention of the motor vehicle accident having occurred or injuries having been sustained. A few days later, he saw a new doctor, [Appellant’s Doctor #1], in [Saskatchewan], and indicated to him that his symptoms and conditions were the result of the motor vehicle accident.

Although [Appellant's Doctor #1] noted in his letter of December 10, 2003 that he suspected "that had he not had the accident he would have remained symptom free for a considerable length of time", the panel finds that the Appellant had not in fact been symptom free since prior to 1999.

The panel finds that, aside from the whiplash symptoms [MPIC's Doctor] noted, there was no change to the quality of the Appellant's symptoms or condition following the motor vehicle accident. Rather, the Appellant experienced a continuation of his pre-motor vehicle accident symptoms, from which he was already medically disabled from working.

The Appellant did experience a clear exacerbation of symptoms in late 2002 and early 2003.

This was described by [Appellant's Neurosurgeon #1] in a letter dated April 29, 2003:

"He gave a history that he was in a road traffic accident in 2001. He was not clear if he had any specific symptoms immediately after the car accident. However since 2002 he has been having neck pain and numbness and tingling in the hands and feet. In the last seven months he has developed difficulty walking because of weakness in the legs..."

This exacerbation would have been closer in time to the fall he experienced in August of 2002 than it was to the motor vehicle accident of November 2001. It is difficult to say whether the Appellant's exacerbation of symptoms leading to his condition in February 2003 was a result of the steady progression of his myelopathic condition or of the fall he experienced in 2002. However, it is not necessary for the panel to determine this question; we have found that the motor vehicle accident did not cause an exacerbation of his pre-existing back condition beyond the temporary whiplash symptoms which he experienced in late 2001.

The panel finds that on a balance of probabilities, the Appellant has failed to establish that it was the motor vehicle accident of November 2001 that caused, exacerbated, or accelerated his pre-existing myelopathic condition.

Accordingly, the decision of the Internal Review Officer dated January 30, 2006 is hereby upheld and the Appellant's appeal is dismissed.

Dated at Winnipeg this 9th day of March, 2011.

LAURA DIAMOND

LEONA BARRETT

DEBORAH STEWART