

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-10-037**

**PANEL:** Mr. Mel Myers, Q.C., Chairperson  
Dr. Sharon Macdonald  
Mr. Les Marks

**APPEARANCES:** The Appellant, [text deleted], was represented by Mr. Ken Kaltornyk of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

**HEARING DATE:** December 14 and 15, 2011

**ISSUE(S):** Whether the Appellant's Income Replacement Indemnity benefits were correctly terminated on October 2, 2009.

**RELEVANT SECTIONS:** Section 110(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

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

**Reasons For Decision**

[The Appellant] was involved in a motor vehicle accident on February 27, 2009. As a result of the motor vehicle accident she sustained soft tissue injuries to her left hip, low back and neck. The Appellant was employed as a healthcare attendant with [text deleted] and continued working until March 14, 2009 when the Appellant was advised by her chiropractor, [Appellant's chiropractor], to take time off from work. The Appellant returned to work at the end of March.

After the motor vehicle accident, there was a reduction in number of hours the Appellant worked and she was entitled to receive a top-up of Income Replacement Indemnity (“IRI”) benefits.

In a note to file dated June 8, 2009 the case manager indicated that it was necessary to assess the Appellant’s specific job and reported that he had spoken to the employer and was advised that the job and time along with effort was not defined. As a result, MPIC referred the Appellant to [text deleted] for a Physical Demands Analysis.

[Appellant’s occupational therapist], occupational therapist, provided a report to MPIC dated August 17, 2009. In this report, the occupational therapist stated that:

1. The Appellant had some limitations prior to the motor vehicle accident and while she was able to manage minimal to moderate transfers and light housekeeping, she was avoiding assignments that required maximal transfers, use of mechanical lifts, and heavier cleaning.
2. Based on the information provided by the employer regarding her pre-motor vehicle accident duties, the Appellant was likely functioning at the lower end of medium work (medium work ranges from 20 – 50 lbs.).
3. Since the motor vehicle accident, the employer had noticed a further reduction in the Appellant’s abilities.
4. She had been limited to light work, lifting 15 to 20 lbs., clients who required stand-by or steadying assistance with transfers, or she was doing more companionship and palliative care where clients were confined to bed. (underlining added)

MPIC referred the Appellant's file to [MPIC's doctor], Medical Consultant with MPIC's Health Care Services. [MPIC's doctor] provided a report on September 18, 2009 and stated:

“Documentation obtained from the health care professionals outlining assessments [the Appellant]. underwent prior to and after the motor vehicle incident, which do not reflect an individual that has developed a significant increase in objective physical findings that would support the conclusion that she is physically impaired from performing her regular full times (sic);

Documentation obtained from [Appellant's occupational therapist] outlining the specific demands of a health care aide (i.e. involving medium level work).

The information leads me to conclude that [the Appellant's] reluctance to return to her regular full-time duties is a byproduct of symptoms, which are not solely the result of the incident in question in all probability.” (underlining added)

#### **Case Manager's Decision:**

On October 2, 2009 the case manager wrote to the Appellant and stated:

“Medical information on file has been reviewed by our Health Care Services Team and it does not identify any physical impairment that would affect your ability to perform your regular work duties. As you have regained the functional ability to perform your work related duties at [text deleted], your entitlement to IRI ended as of October 2, 2009.”

On November 17, 2009 the Appellant filed an Application for Review.

At MPIC's request the Appellant's chiropractor, [Appellant's chiropractor], provided a report dated January 17, 2010. In this report [Appellant's chiropractor] indicated that the Appellant had a reduction in her work hours which created a financial burden to the Appellant. [Appellant's chiropractor] was of the view that the Appellant's reduction in income was due to her recent exacerbation to and deterioration in her spinal health.

MPIC referred [Appellant's chiropractor's]report to [MPIC's doctor] for his assessment. [MPIC's doctor] provided an interdepartmental memorandum dated February 1, 2010 to the Internal Review Officer and stated:

“It is noted in the file that [the Appellant] had chronic low back pain prior to the incident in question. It is also noted that she had pre-existing problems with her right knee and hip. Based on this, it is not unreasonable to assume that had [the Appellant]not been involved in a motor vehicle incident she would still be experiencing problems with low back pain as well as symptoms involving her right hip and knee. The file does not contain information indicating [the Appellant’s] pre-existing medical conditions were enhanced by the motor vehicle incident in question.

Based on the amount of time that has passed since the incident in question, the amount of care she has received to address her symptoms, and the natural history of a mild musculoskeletal strain and/or exacerbation of pre-existing symptoms, it is my opinion any symptoms [the Appellant] might be experiencing at this time are not causally related to the incident in question.” (underlining added)

### **Internal Review Officer’s Decision:**

The Internal Review Officer issued a decision on February 16, 2010. In this decision the Internal Review Officer upheld the case manager’s decision and dismissed the Appellant’s Application for Review on the following grounds:

“I concur with [MPIC’s doctor’s] opinion that it is probable that your pre-existing condition was exacerbated by this motor vehicle accident. However, with the therapy you have received to date (29 chiropractic treatments and 17 physiotherapy treatments) it is medically probable at this point in time, almost one year post-accident, the natural history of a motor vehicle accident related injury and or exacerbation of your pre-existing condition would have resolved in all probability. It is more likely that your current complaints are related to your pre-existing conditions.”

The Appellant filed a Notice of Appeal on March 17, 2010.

[Appellant’s doctor #1], the Appellant’s physician, provided a report to MPIC date October 4, 2010 which indicated that:

1. The Appellant did have an underlying osteoarthritis that had been affecting her hip prior to the motor vehicle accident of February 27, 2009.
2. As well, she had a history of chronic low back pain prior to the motor vehicle accident.
3. The Appellant was able to function and mobilize normally with minimal pain and with a normal gait prior to the motor vehicle accident.

4. Her mobility and pain level became worse after the motor vehicle accident.
5. Evidence to support an enhancement of her underlying conditions as a result of the motor vehicle accident is subjective.
6. “...I still believe it is reasonable to conclude many of her symptoms were likely exacerbated and remain present to a degree that is greater than that had she not had the accident last February.” (underlining added)

[Appellant’s physiotherapist], the physiotherapist, provided a report on September 28, 2010.

[Appellant’s physiotherapist’s] report is summarized by [MPIC’s doctor] in his interdepartmental memorandum to MPIC dated March 7, 2011 as follows:

- “[The Appellant] is not currently functioning at the level of function she was at prior to the motor vehicle accident of February 27, 2009;
- Low back and hip pain are the main limiting factors of [the Appellant’s] function;
- A sudden increase in left hip pain on weight bearing was a complaint following the incident in question;
- Left hip movement and strength as of March 3, 2009 was similar to the objective testing done on January 24, 2008;
- Within four months of March 3, 2009, hip movement had deteriorated and further deterioration was noted along with pain with movement;
- The degree to which each condition has contributed to the resulting deterioration of her left hip pain cannot be clear;
- I am not able to determine whether the motor vehicle accident was or was not a factor in contributing to the deterioration of [the Appellant’s] left hip function subsequent to February 27, 2009.” (underlining added)

[Appellant’s surgeon] provided a report on December 23, 2010 which was also summarized by

[MPIC’s doctor] in his interdepartmental memorandum as follows:

- “X-rays taken of [the Appellant’s] left hip in November of 2002 revealed minimal degenerative changes;
- [The Appellant] was initially assessed in October of 2003 at which time x-rays showed only minor degenerative changes in the hip;
- X-rays taken in September of 2004 of the left hip revealed a progression in the arthritic changes to a moderate degree;
- [The Appellant] was assessed on June 18, 2008 for increasing pain in her left hip at which time x-rays revealed quite advanced osteoarthritic changes;
- [The Appellant] was placed on a waiting list for hip arthroplasty;
- [The Appellant] subsequently requested to delay the hip arthroplasty due to an

improvement in her symptoms;

- [The Appellant] was re-assessed in June 2010 stating her hip had become more symptomatic, but that she did not want to proceed with hip arthroplasty (a cortisone injection was provided to her);
- [The Appellant] did contact [Appellant's surgeon]'s office requesting that she be placed back on the waiting (list) for total hip arthroplasty;
- The accident seemed to exacerbate [the Appellant's] pre-existing underlying condition based on her reporting of increased pain following the incident." (underlining added)

The Appellant's chiropractor, [Appellant's chiropractor], also provided a report dated January 16, 2011 in which he indicated that:

1. The Appellant had reached maximum therapeutic benefit and the treatment being provided to the Appellant is in the form of muscle stimulation to reduce symptoms and is on as-needed basis.
2. The Appellant had been under his care for intermittent spinal pain related to her workplace duties since 1990 and review of her file indicated that she was treated by him five times in 2006, once in 2007, and seven times in 2008.
3. "It is my opinion that the ongoing health troubles experienced by [the Appellant] are not solely due to age-related hip degeneration. The onset of symptoms and the inability to perform her job related activities are not simply a temporal relationship with the MVA trauma. Although [the Appellant] may have been predisposed to future dysfunction in the absence of the two motor vehicle accidents, the repeated trauma in a very short period of time greatly accelerated the dysfunction and disability. In my opinion, the impairment is significant and permanent. The left hip arthroplasty will make the procurement of gainful employment doubtful." (underlining added)

[MPIC's doctor] provided an interdepartmental memorandum to the Internal Review Officer on March 7, 2011 and stated:

"Based on documentation indicating [the Appellant] had advanced osteoarthritic changes involving her left hip prior to the incident in question to the extent that she was being considered as a candidate for hip arthroplasty, it is reasonable to conclude that had [the Appellant] not been involved in the February 27, 2009 motor vehicle incident, she would have continued to experience hip pain from time to time that varied in severity and adversely affected her level of function. The file does not contain documentation indicating [the Appellant's] objective evaluation as well as radiological assessments

identified a rapid deterioration of the left hip as a result of the incident in question. It is reasonable to conclude that had [the Appellant] not been involved in the February 27, 2009 motor vehicle incident, she would have encountered functional difficulties relating to her left hip that would have negatively affected her ability to perform work as a Health Care Aide. Based on information obtained from [Appellant's doctor #1] and [Appellant's physiotherapist], it is not possible to determine to any degree of medical certainty, as to how the February 27, 2009 motor vehicle incident factored into, if at all, the occupational disability [the Appellant] has developed as a result of her underlying hip osteoarthritis. [Appellant's chiropractor] was of the opinion that the motor vehicle incidents were a significant contributor to her current status but I am uncertain as to what he based this on, since there is insufficient medical evidence identifying a rapid deterioration in arthritic changes as well as insufficient medical evidence indicating her objective physical findings changed dramatically shortly after the incident in question."

[MPIC's doctor] concluded his memorandum by stating:

"Information once again leads me to conclude that [THE APPELLANT]'s pre-existing medical conditions were exacerbated by the incident in question. It is also my opinion the medical evidence does not indicate her pre-existing conditions were enhanced.

It is my opinion [the Appellant's] present occupational disability is a byproduct of the osteoarthritic changes identified in her left hip and possibly a result of the degenerative changes identified in her spine. These conditions did not develop as a direct result of the incident in question.

After reviewing the above noted reports, it is my position, the information obtained from the reports does not lead me to change the opinions previously rendered." (underlining added)

On June 9, 2011 [Appellant's supervisor], of [text deleted], provided an email to the Claimant

Adviser and stated:

"Here is the list of duties that [the Appellant] was required to perform:

- Assists clients with the personal care tasks of daily living, including skin care, hair care, mouth care, bathing, bowel and bladder care, positioning and movement, basic wound care, feeding (including special diets) and assistance with medication administration and oxygen.
- Assists with ambulating and mobilization of patient, including mechanical lifts
- Performs other related housekeeping tasks as indicated in the individualized written client service plan.

After the accident [the Appellant] had the following restrictions:

- Lifting or carrying a max of 15 lbs

- Standing stationary for only 10 mins
- Could only work 3 - 4 hours per day

In summary, we had to remove [the Appellant] from her regular clients due to her hours restriction and that she could not perform personal care duties or use a Hoyer lift. We assigned her homemaking/companion clients, however, she could not lift grocery bags, she had issues vacuuming and pushing wheelchairs. We then became at a loss as to where to put her as all of our clients require some type of physical demand on our caregivers.” (underlining added)

### **Appeal:**

The relevant provisions of the MPIC Act provide:

#### **Definitions**

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

**"accident"** means any event in which bodily injury is caused by an automobile;

**"bodily injury"** means any physical or mental injury, including permanent physical or mental impairment and death;

**"bodily injury caused by an automobile"** means any bodily injury caused by an automobile, by the use of an automobile, or by a load...

#### **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;

The Appellant testified at the hearing and stated that:

1. Her duties as a healthcare attendant with [text deleted] included assisting clients with personal care tasks of daily living, hair care, cleaning, bowel and bladder care, and assisting with medication administration and ambulating and mobilization of clients, including medical lifts and other tasks as required.



2. She had a pre-existing degenerative condition of her lower back and hip, but she was able to perform the essential duties of a healthcare worker without any restriction in terms of her work or lifting a client.
3. After the motor vehicle accident, her personal and work activities had been adversely affected.
4. She had difficulties with mobility due to the significant increase in her left hip pain level.
5. The increased pain to her left hip caused her to reduce the number of hours she worked, limited her ability to lift or carry clients and she was only able to work 3-4 hours per day.

[Appellant's chiropractor], the chiropractor who had been treating her for over 20 years, testified at the hearing and stated:

1. She had some problems with her back prior to the motor vehicle accident but she was able to carry on her work duties without restriction in hours of work or the ability to lift clients.
2. After the motor vehicle accident there was a significant reduction in her mobility and increase of significant pain to her left hip.
3. In his view the reduction in her ability to work was due to the motor vehicle accident.

The Regional Director of [text deleted], [Appellant's supervisor], testified at the hearing and stated that:

1. She had personal knowledge of the work that the Appellant did and confirmed the information contained in her email to the Claimant Adviser Office dated June 9, 2011.
2. Prior to the motor vehicle accident the Appellant had no restrictions in lifting and carrying, standing or hours worked.

3. After the accident, there were restrictions on her lifting or carrying to a maximum of 15 pounds, standing stationary for only 10 minutes and her ability to work no more than 3 to 4 hours per day.
4. She was removed from her regular duties due to her restricted hours and that she could not perform personal care duties or use a Hoyer lift.
5. She was assigned to homemaking and/or companion clients; however, she could not lift grocery bags and had issues with vacuuming and pushing wheelchairs.
6. It became difficult to provide the Appellant with any employment.

[MPIC's doctor], in his testimony, indicated that:

1. The Appellant had a pre-existing osteoarthritic condition involving the left hip prior to the motor vehicle accident and she was a candidate for hip replacement.
2. Prior to the motor vehicle accident the Appellant was unable to carry out her regular duties as a healthcare attendant and her workload was reduced.
3. The motor vehicle accident did cause an exacerbation of the Appellant's left hip but it did not result in a permanent impairment which would prevent the Appellant from resuming regular employment after the motor vehicle accident.
4. The medical evidence did not contain any objective evaluation to establish that the rapid deterioration in the Appellant's arthritic changes were due to the motor vehicle accident.
5. There was no causal connection between the Appellant's complaints and the motor vehicle accident.

**Submissions:**

MPIC's legal counsel submitted that:

1. [MPIC's doctor's] assessment of the Appellant was correct and MPIC was justified in

concluding that the Appellant's symptoms after the motor vehicle accident were not due to the motor vehicle accident but were due to the Appellant's pre-existing condition which resulted in the reduction of her workload after the motor vehicle accident.

2. The Appellant suffered from a degenerative left hip prior to the motor vehicle accident and she was considering having a hip replacement.
3. The impact of the motor vehicle did exacerbate the Appellant's pain, but did not result in a permanent impairment which would have adversely affected her ability to work.

MPIC's legal counsel further submitted that:

1. [MPIC's doctor] was correct in concluding there was no objective evidence to determine that the injuries the Appellant sustained in the motor vehicle accident resulted in a permanent impairment of the Appellant's mobility which prevented her from carrying out her pre-accident employment.
2. [MPIC's doctor] was also correct in accepting the assessment of the occupational therapist that concluded, in her report of August 17, 2009, based on the information provided by the employer that the Appellant was likely functioning at the lower end of medium work (medium work ranges from 20-50 pounds) prior to the motor vehicle accident.
3. Based on a lack of objective evidence in respect of the impact on the Appellant's pre-existing condition as a result of the motor vehicle accident, [MPIC's doctor] concluded that the Appellant's reduction in workload after the motor vehicle accident was a result of her pre-existing condition rather than as a result of the motor vehicle accident.

MPIC's legal counsel therefore requested that the appeal be rescinded and the decision of the Internal Review Officer dated February 16, 2010 be affirmed.

The Appellant's representative filed a written submission and asserted that:

1. The occupational therapist had erred in concluding that, prior to the motor vehicle accident, based on information provided by the employer that there had been a reduction in the Appellant's workload.
2. [Appellant's chiropractor], a chiropractor, who had been treating the Appellant for over 20 years, testified that prior to the motor vehicle accident the Appellant had not had a reduction in her workload.
3. [Appellant's supervisor], [text deleted's] Regional Director, testified that she had personal knowledge of the Appellant's work and that there had been no reduction in workload prior to the motor vehicle accident.
4. She further testified that after the motor vehicle accident there was a significant reduction in the Appellant's workload and hours of work.

The Appellant's representative therefore submitted that having regard to the testimony of the Appellant which was corroborated by [Appellant's chiropractor] and [Appellant's supervisor], [MPIC's doctor] had erred in his conclusion that the reduction in the Appellant's regular duties was a by-product of the Appellant's pre-existing condition and had nothing to do with the impact of the motor vehicle accident on the Appellant. For these reasons the Claimant Adviser requested that the appeal be allowed and the decision of the Internal Review Officer be rescinded.

**Discussion:**

The Commission finds that the Appellant has established on a balance of probabilities that the motor vehicle accident materially attributed to her inability to continue to hold the same employment that she had prior to the motor vehicle accident.

MPIC relied on [MPIC's doctor's] medical opinion that there was no causal connection between the injuries the Appellant sustained in the motor vehicle accident and the Appellant's inability to continue regular employment as a healthcare attendant. [MPIC's doctor], in his report to MPIC on September 18, 2009, arrived at his opinion on causality on the following grounds:

1. There was no objective evidence provided by the Appellant's healthcare professionals to establish that she was physically impaired from performing her regular duties.
2. [Appellant's occupational therapist's] report established that the Appellant had reduced her workload prior to the motor vehicle accident.
3. Based on these facts [MPIC's doctor] concluded that the Appellant's inability to return to her full-time duties was a result of pre-existing hip problems.

The Commission finds that [Appellant's occupational therapist], in her report to MPIC dated August 17, 2009 erred in concluding that prior to the motor vehicle accident there had been a permanent reduction in the Appellant's workload. [Appellant's occupational therapist] stated that information provided by the employer regarding the Appellant's pre-motor vehicle accident duties indicated that the Appellant was likely functioning at the lower end of medium work (medium work ranges from 20 to 50 lbs.) The Commission finds, however, that [Appellant's occupational therapist's] report is contradicted by the testimony of the Appellant, [Appellant's chiropractor] and [Appellant's supervisor], and the report of the physiotherapist, [Appellant's physiotherapist].

The Appellant testified that prior to the motor vehicle accident she did have a back and hip problem, but she was able to carry out all the duties that were assigned to her. Due to the injuries sustained in the motor vehicle accident she was unable to carry out these duties.

[Appellant's supervisor] testified that she personally supervised the Appellant and stated that the Appellant's reduced workload was limited to a period between December 2008 and February 2009. She stated that prior to the motor vehicle accident the Appellant was definitely carrying out her regular job duties including lifting (with or without a Hoyer lift), but that after the motor vehicle accident there was a significant reduction in the Appellant's workload and hours of work.

MPIC did not challenge the testimony of [Appellant's supervisor]. MPIC did not call as a witness the occupational therapist, [Appellant's occupational therapist], or the unidentified employer representative who allegedly provided [Appellant's occupational therapist] with information regarding the alleged reduction of work prior to the motor vehicle accident. The Commission notes that MPIC's case manager did not personally interview the unidentified employer's representative in order to confirm that the Appellant in fact had a reduced workload on a permanent basis prior to the motor vehicle accident. Instead, MPIC relied on a hearsay statement from an unidentified employer representative in order to establish the Appellant's reduced workload prior to the motor vehicle accident.

[Appellant's chiropractor], who treated the Appellant for a period of over 20 years, testified that for a period of two weeks in January 2009 he had placed the Appellant on restricted duties. After this two week period she had returned to work without any restrictions and was performing her regular duties prior to the motor vehicle accident. [Appellant's chiropractor] also testified that due to the injuries the Appellant sustained in the motor vehicle accident there was a reduction in her workload.

[Appellant's physiotherapist], the physiotherapist was not able determine whether the motor vehicle accident was a factor contributing to the Appellant's deterioration of her left hip function, but she did state that the Appellant was not currently functioning at the level of function that she was prior to the motor vehicle accident. She further reported that within four months of March 3, 2009, the Appellant's hip movement had deteriorated and further deterioration was noted along with pain with movement.

Unfortunately [MPIC's doctor] relied on the flawed report of [Appellant's occupational therapist] in respect of the Appellant's duties prior to the motor vehicle accident as an important factor in concluding that the Appellant's inability to return to her regular duties after the motor vehicle accident were not connected to the injuries she sustained in the motor vehicle accident.

For these reasons the Commission gives greater weight to the testimony of the Appellant, [Appellant's chiropractor] and [Appellant's supervisor] and the report of [Appellant's physiotherapist] dated September 28, 2000 than it does to [MPIC's doctor's] opinion in determining:

1. The Appellant, except for a short period of time, worked her regular duties prior to the motor vehicle accident.
2. After the motor vehicle accident the Appellant's hour of work were reduced.

The Commission further noted there appears to be a shift in [MPIC's doctor's] opinion on causation. In his report of September 18, 2009, [MPIC's doctor] stated:

“The information leads me to conclude that [the Appellant's] reluctance to return to her regular full-time duties is a byproduct of symptoms, which are not solely the result of the incident in question in all probability.”

The Commission agrees with the Appellant's representative who asserted, in his written submission that [MPIC's doctor's] statement implies that The Appellant's inability to return to her regular full-time employment was at least partially due to the injuries she suffered in the motor vehicle accident in all probability. The Commission notes that in establishing a causal connection between the motor vehicle accident and the Appellant's injuries it is not necessary to establish that the motor vehicle accident was the sole cause of the injuries sustained by the Appellant, but it is sufficient to find that the motor vehicle accident materially contributed to the Appellant's injuries.

The Commission notes that in [MPIC's doctor's] subsequent reports to MPIC, he had shifted his position in no longer asserting that the Appellant's inability to return to her regular employment was at least partially due to the injuries she sustained in the motor vehicle accident in all probability.

The Appellant's physician, [Appellant's doctor #1] corroborated the Appellant's testimony that prior to the motor vehicle accident she was able to function and mobilize normally with minimal pain and with a normal gait although she had underlying osteoarthritis affecting her hip and a history of chronic low back pain. He further reported that the Appellant's mobility and pain level became worse after the motor vehicle accident. He concluded that although her complaints of underlying conditions were subjective, they were enhanced as a result of the motor vehicle accident and stated:

“...I still believe it is reasonable to conclude many of her symptoms were likely exacerbated and remain present to a degree that is greater than that had she not had the accident last February.” (underlining added)



[Appellant's surgeon], surgeon, had examined X-rays of the Appellant's left hip in November 2002, October 2003, September 2004 and assessed her on June 18, 2008 and placed her on a waiting list for a hip arthroplasty. He had assessed the Appellant in June 2010 and noted that the Appellant's hip had become more symptomatic and concluded:

The accident seemed to exacerbate [the Appellant's] pre-existing underlying condition based on her reporting of increased pain following the incident." (underlining added)

The Commission finds that the medical opinions of [Appellant's chiropractor], [Appellant's surgeon] and [Appellant's doctor #1] were all based on personal interviews with the Appellant and there was no reference in any of their reports to indicate that the Appellant was in any way exaggerating her testimony. [MPIC's doctor] based his medical opinion on a paper review and had no opportunity of assessing the Appellant's credibility.

The Commission finds that in all issues in dispute between the Appellant and MPIC on the issue of causality, the Commission accepts the testimony of the Appellant. The Appellant testified at the hearing in a direct and unequivocal fashion and her testimony was corroborated by the medical reports of [Appellant's surgeon] and [Appellant's doctor #1], as well as the testimony of [Appellant's chiropractor] and [Appellant's supervisor] and the report of [Appellant's physiotherapist]. Contrary to [MPIC's doctor]'s opinion, [Appellant's physiotherapist], [Appellant's supervisor] and [Appellant's chiropractor] established that there was no reduction in the Appellant's workload prior to the motor vehicle accident. Based on the reports of [Appellant's doctor #1] and [Appellant's surgeon], the testimony and reports of [Appellant's chiropractor], it is their view that there is a causal connection between the Appellant's medical condition and the motor vehicle accident.

**Decision:**

Having regard to the testimony of the Appellant, [Appellant's chiropractor] and [Appellant's supervisor], and the reports of [Appellant's physiotherapist], [Appellant's doctor #1] and [Appellant's surgeon], the Commission finds:

1. There is ample evidence to establish on the balance of probabilities that the trauma suffered by the Appellant as a result of the motor vehicle accident resulted in a permanent impairment of the Appellant's left hip and is not related to her age related hip degeneration.
2. This permanent impairment reduced the Appellant's ability to return to the regular duties she performed prior to the motor vehicle accident.

For these reasons the Commission rejects [MPIC's doctor's] medical opinion on the issue of causality and finds that on the balance of probabilities there was a causal connection between the injuries the Appellant sustained and the motor vehicle accident which resulted in a permanent impairment and prevented the Appellant from carrying out her regular duties as a healthcare attendant after the motor vehicle accident. The Commission therefore finds that MPIC erred in terminating the Appellant's IRI benefits because as of October 2, 2009 she was unable to hold the employment that she held at the time of the accident pursuant to Section 110(1)(a) of the MPIC Act. The Commission therefore allows the Appellant's appeal and rescinds the Internal Review Officer's Decision dated February 16, 2010.

Dated at Winnipeg this 18<sup>th</sup> day of January, 2012.

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**MEL MYERS, Q.C.**

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**DR. SHARON MACDONALD**

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**LES MARKS**