Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-046

PANEL:	**Ms Laura Diamond, Chairperson** **Mr. Neil Cohen** **Ms Bobbi Éthier**
APPEARANCES:	**The Appellant, [text deleted], was represented by Ms Nicole Napoleone of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.**
HEARING DATE:	**November 7, 2012**
ISSUE(S):	**1. Whether the Appellant's Income Replacement Indemnity benefits were correctly terminated effective November 27, 2009** **2. Whether the Appellant is entitled to further treatment.**
RELEVANT SECTIONS:	**Sections 110(1) and 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5 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

The Appellant was injured in a motor vehicle accident on November 18, 2008. As a result of the accident, she suffered soft tissue injuries to her neck, right knee, left shoulder, left forearm, right middle finger and headaches. At the time of the accident she was employed as a home support worker. She was collecting Workers' Compensation benefits as a result of a workplace injury, but was scheduled to return to work on November 22, 2008. As a result of injuries sustained in the motor vehicle accident, she was unable to return to work on that date.

The Appellant was in receipt of treatment and Income Replacement Indemnity ("IRI") benefits from MPIC as a result of her motor vehicle accident injuries. She received physiotherapy treatment, medical treatment, and chiropractic treatment and also underwent a six week reconditioning program at [Rehabilitation (Rehab) Facility].

Following the reconditioning program, on May 1, 2009, the Appellant's case manager sent her a decision letter ending her entitlement to IRI benefits based upon the outcome of the six week reconditioning program and the recommendation from the clinic that the Appellant was ready for a full return to work without restrictions on May 4, 2009. The Appellant filed an Application for Review and advised the Internal Review Officer that during her return to work assessment, on approximately January 20, 2009, she had injured her left arm lifting a 10 pound weight, and that this injury had gotten worse, requiring assessment. Eventually, the Appellant's difficulties with her left wrist were diagnosed as De Quervain's tenosynovitis.

Accordingly, the Internal Review Officer allowed the Appellant's Application for Review on July 15, 2009, concluding that the medical evidence on file did not support that the Appellant was capable of performing the duties of her employment on a full-time basis as of May 1, 2009. She noted that she was prepared to give the Appellant the benefit of the doubt regarding the injury during her assessment at physiotherapy, and accepted that a causal relationship existed between her left wrist injury and the treatment received and required as a result of the motor vehicle accident.

The Appellant then underwent an independent medical examination with [Independent Physiatrist], and her file was reviewed by MPIC's Health Care Services team.

Based upon these medical opinions, the Appellant's case manager issued a decision letter on November 25, 2009, taking the position that the Appellant's left wrist symptoms were not caused by the motor vehicle accident, but rather, were a result of unrelated carpal/metacarpal osteoarthritis.

The Appellant filed an Application for Review from the case manager's decision of November 25, 2009. The Internal Review Officer referred the Appellant's file, along with information provided by her physiatrist and chiropractor to MPIC's Health Care Services for a further review. She also informed Health Care Services that she had given the Appellant the benefit of the doubt on a previous decision and accepted that a causal relationship existed between her left wrist injury and the treatment received at the physiotherapist, which was required as a result of the motor vehicle accident.

As a result of this Health Care Services review, the Internal Review Officer then concluded on March 15, 2010 that the weight of evidence on the Appellant's file supported the decision that she was able to perform the essential duties of her employment by November 25, 2009, and confirmed the case manager's decision to terminate both her entitlement to IRI benefits and further treatments.

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

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into her appeal. She described the motor vehicle accident of November 2008 and the injuries to her knee, middle finger of her right hand, shoulders, neck and back.

The Appellant also described her pre-motor vehicle accident employment as a home support worker. She explained that this also involved companion duties, escorting clients to things like medical appointments. In most of these instances, she was required to push clients' wheelchairs and she described the physical nature of this duty, which involved going up and down ramps, as well as pushing the chair on flat surfaces. She explained that prior to her workplace accident and the motor vehicle accident, she had no problems performing these duties. She had injured her back at work, but had recovered from this injury and was scheduled to go back to work on November 22, 2008. Instead, she suffered injuries in the motor vehicle accident and began receiving treatment and IRI benefits in regard to these injuries.

The Appellant was attending [Rehab Facility] for treatment. She understood that MPIC wanted her to go back to work, and she was working on her strength. During a re-assessment visit, the Appellant picked up a 10 pound weight, and lifted it, but had to put the weight down immediately as it hurt her arm and shoulder. Not long after that, her arm and shoulder started to swell. She reported this injury to her case manager, and discussed it with [Appellant's Physiatrist], and [Appellant's Chiropractor], who also reported it to the case manager.

The Appellant described the symptoms she experienced following this injury. She felt a lot of pain in her thumb, travelling down her wrist. This was swollen all the time. Icing and heat did not work. In fact, she noted that the swelling did not go down until she had surgery on her hand. Prior to this incident, she had good strength in her hand, but following the injury she had no strength and couldn't even pick up something light without severe pain in her hand.

The Appellant explained that she was diagnosed with De Quervain's tenosynovitis, but that she had never suffered from any of these problems prior to the motor vehicle accident. She had a pre-existing history of bilateral carpal tunnel syndrome, but this was surgically released in her right hand in 1996 and in her left hand in approximately 1998. Since that time, both her wrists were fine, with no problems since.

The Appellant also explained how the De Quervain's tenosynovitis symptoms differed from her previous carpal tunnel symptoms. The De Quervain's symptoms involved pain from the thumb going down the wrist, with a swollen hand that never went down.

The Appellant testified that when she explained the injury which occurred at [Rehab Facility], her Internal Review Officer initially said that she was prepared to give her the benefit of the doubt that an injury had occurred through treatment at [Rehab Facility] and her IRI benefits were reinstated in July of 2009.

[Appellant's Physiatrist] then referred the Appellant to a plastic surgeon hand specialist, [text deleted], who performed surgery on December 30, 2011. The recovery from that surgery took eight weeks and she healed to the point where she could then return to her prior occupation. However, at the date of the hearing, the Appellant was currently off work due to hip problems, so she is seeking IRI benefits from November 28, 2009 to February 29, 2012, when she recovered from the hand surgery.

The Appellant explained that she also continued to attend for chiropractic treatment on her own, but that this was covered by her Blue Cross benefits. However, she had not been reimbursed for travel expenses incurred in connection with attending for those chiropractic treatments. She testified that the chiropractor treated her wrist which helped with her pain.

On cross-examination, the Appellant was asked a number of questions which suggested that her duties as a home support worker were of a light nature. It was suggested that she did not really do any strenuous activity and that it is not a physically demanding job. However, the Appellant explained that while the position does not involve heavy lifting, there is variety among the clients and jobs which she performs. A home support worker does just cleaning and laundry, but a companion also has to push wheelchairs, and sometimes she has had to assist with transfers.

The Appellant maintained that she wished to return to her job and that she had not created obstacles to return to work by complaining about issues such as parking, etc. She was a single mother who had relied upon some social assistance benefits while working as many shifts as she could as a home support worker.

The Appellant also provided reports from her physiotherapist, acknowledging the injury which had occurred to her wrist and its possible connection to her physiotherapy assessment. She also submitted reports from [Appellant's Physiatrist], who was of the view that the Appellant's diagnosis of De Quervain's tenosynovitis was, on a balance of probabilities, probably related to the motor vehicle accident in question or related to the treatment of the motor vehicle accident injuries.

She also provided reports from [Appellant's Chiropractor], who was of the view that the De Quervain's tenosynovitis could be precipitated from a singular incident such as lifting a 10 pound weight. He believed that on a balance of probability, the Appellant's left hand/wrist injury was related to the incident that occurred during her accident-related treatment. Further, he opined that the restrictions resulting from this injury would limit the Appellant in her ability to assist clients' rehabilitative processes or to perform routine housekeeping tasks as related to a safe and comfortable environment for the client.

The Appellant also provided a report from the plastic surgeon hand specialist, [text deleted], who was of the view that the accident played a role in the development of the Appellant's De Quervain's tenosynovitis and that physiotherapy treatment would be an important component of recovery from her injury.

Counsel for the Appellant submitted that the evidence provided by the clinical notes and reports of [Appellant's Physiatrist] and [Appellant's Chiropractor] clearly established that the Appellant reported difficulties with her left wrist following her attempt to lift 10 pounds at physiotherapy. While the Appellant may have suffered from degenerative issues in her wrists prior to the motor vehicle accident, it was clear from her evidence and the evidence of these caregivers that this condition was completely asymptomatic prior to the incident at physiotherapy. Although MPIC's Health Care Services team took the position that any aggravation of this condition from the incident at physiotherapy would have been of a temporary nature, both [Appellant's Chiropractor] and [Appellant's Physiatrist] were of the view that a single incident such as this could have caused an exacerbation of the condition such that it became symptomatic. Both opined that, on a balance of probabilities, the Appellant's symptomatic De Quervain's tenosynovitis was a result of the motor vehicle accident related treatment.

Further, counsel submitted that [Appellant's Plastic Surgeon], who performed the surgery on the Appellant's hand on December 30, 2011, took the position that lifting a 10 pound weight could aggravate a previously asymptomatic condition. He also said that on a balance of probabilities, it was most probable that the motor vehicle accident played a role in the development of the Appellant's De Quervain's tenosynovitis, as the injury from the motor vehicle accident may have changed the biomechanics of her upper left side, causing her to develop symptoms.

All three of these caregivers were of the view that, having regard to the Appellant's job description, this condition would preclude her from doing a majority of the duties involved with her job. Counsel reviewed the position description provided by the employer, the NOC position description for homemaker and the Appellant's description of her job duties. She emphasized that there were two aspects to the duties of a home support worker. While the home support may have involved light duties, the companion and medical escort duties can fall into the medium range of difficulty. MPIC took the position that this occurred only on an occasional basis, but from the evidence of the Appellant regarding her duties of pushing clients in wheelchairs up ramps, some of whom are overweight or with significant ambulation difficulties, these tasks fell within the medium range on more than just a seldom or occasional basis.

Counsel compared this appeal to the Commission's decision in *[text deleted]* (AC-05-101) where an occupational therapist gave evidence that the Physical Demands Analysis report had certain omissions, such as a maximum lift weight, and disregarded the job requirement to lift at least 50 pounds. Although the requirement was noted as "rare", it still appeared in the description as a required task. Counsel noted that the Appellant was successful in that case and that similarly in this appeal, the panel should not dismiss a job requirement, even if it is occasional or rarely required (although she submitted that the requirement in this case is more than occasional):

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

Therefore, when the real job duties are compared with the restrictions caused by the Appellant's injury to her wrist, the Commission should conclude that the impairment of function to the Appellant's left hand, as a result of motor vehicle accident related treatment, caused her to be unable to perform the duties of her pre-motor vehicle accident occupation. Accordingly, she should be entitled to IRI benefits between November 28, 2009 and February 29, 2012, as well as funding for travel expenses incurred in connection with travelling to chiropractic treatments for her wrist condition.

Evidence and Submission for MPIC:

Counsel for MPIC relied upon reports provided by [Independent Physiatrist] who performed an independent examination and assessment of the Appellant, as well as reports from [MPIC's Doctor] of MPIC's Health Care Services team.

[The Independent Physiatrist] reported on September 13, 2009. Although he acknowledged that the Appellant's left wrist/hand issues likely would affect lifting and functional capability of the Appellant, he was of the view that there was no apparent evidence that the injuries sustained in the motor vehicle accident precluded the Appellant from performing the occupational duties of home support worker. He was of the view that her left wrist findings, consistent with De Quervain's tenosynovitis plus severe osteoarthritis, were not connected to the motor vehicle accident.

[MPIC's Doctor] reviewed this report and provided several reports indicating that it was likely that carpal-metacarpal osteoarthritis was contributing to her wrist symptoms and that De Quervain's tenosynovitis was a condition which most often developed as a result of repetitive use and not secondary to a specific event. Even following his review of the reports of [Appellant's Chiropractor], [Appellant's Physiatrist] and [Appellant's Plastic Surgeon], where all three opined that there was a connection between the De Quervain's tenosynovitis and the motor vehicle accident or the treatment which followed, [MPIC's Doctor] was of the opinion that a probable cause/effect relationship could not be established between the incident in question and/or the treatments she received to address medical conditions arising from the incident and the diagnosed De Quervain's tenosynovitis.

Counsel for MPIC submitted that the Appellant had a history of multiple health issues over the years, including mid and lower back problems, a degenerative knee and bilateral carpal tunnel syndrome.

Counsel for MPIC acknowledged that there was a possibility that the Appellant's wrist was somewhat injured during the reassessment at physiotherapy. There was some evidence on the file of the Appellant's reports of left wrist swelling, etc. following this incident. However, a review of the medical reports showed that the Appellant had full range of motion and completed functional tests at that time. This suggested that there may have been a brief swelling and aggravation of the wrist which returned to full function. As a result, in July of 2009, the Appellant was given the benefit of the doubt that there was some difficulty with her wrist following the incident in question. However, more information was subsequently collected and the Appellant was examined by [Independent Physiatrist]. It was then concluded that in regard

to the incident at physiotherapy, the aggravation would be minimal and temporary. It was expected to be easily resolved.

[MPIC's Doctor] carefully reviewed all of the reports of the Appellant's caregivers and of [Independent Physiatrist] and concluded that the Appellant should have been able to do her job, in spite of her complaints of wrist pain. Further, he continued to be of the view that, on a balance of probabilities, the Appellant's De Quervain's tenosynovitis symptoms were not connected to the motor vehicle accident but rather, were the result of a pre-existing condition. While the incident of physiotherapy may have temporarily aggravated this condition, its exacerbation did not continue and the Appellant should not be entitled to further treatment or IRI benefits as a result.

It was submitted that the evidence failed to establish that the Appellant was not capable of performing her light demand job duties as a result of any injuries arising out of the motor vehicle accident or treatment arising there from, after November 28, 2009. Nor was any treatment for motor vehicle accident related injuries required after this time. Accordingly, counsel submitted that the Appellant's appeal should be dismissed and the decision of the Internal Review Officer upheld.

Discussion:

The MPIC Act provides:

> **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;

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;

Manitoba Regulation 40/94 provides:

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;

The onus is on the Appellant to show, on a balance of probabilities, that she was entitled to further treatment benefits as a result of the motor vehicle accident and that she continued to be entitled to an IRI benefit as a result of being unable to hold the employment that she held at the time of the accident between November 28, 2009 and February 29, 2012, when she recovered from her hand surgery.

The panel has reviewed the documentary evidence on the Appellant's indexed file, as well as the testimony of the Appellant and the submissions of both counsel.

Our review of this file discloses that there were many different titles used by MPIC in describing the Appellant's job. For example, the Internal Review decision of July 15, 2009 (which

reinstated the Appellant's benefits) described the position as home support worker, while in a memo to [MPIC's Doctor] dated February 10, 2010, the Internal Review Officer described the position as a "Companion". The panel has paid careful attention to the Appellant's description of the job that she performed. We agree with the submission of counsel for the Appellant that the job has two aspects. The home support and companion aspects involve lighter duties, with the medical escort component (which MPIC submitted was occasional and rare) involving a medium level of difficulty. We find that there was an unpredictability regarding what was required in the Appellant's job. The job changed day to day, even moment to moment, between different clients with different needs and different physical characteristics. As a result, the panel finds that the Appellant has to be able to perform the medium strength aspects of the position in order to perform the essential tasks required of her occupation.

In his report dated September 13, 2009, [Independent Physiatrist] recognized that the left wrist/hand issues would likely affect lifting and functional capability for the Appellant, noting that [Appellant's Physiatrist] had listed some left upper extremity restrictions that appeared appropriate. These restrictions were set out in [Appellant's Physiatrist's] letter of February 19, 2009 where he indicated the Appellant should do no repetitive, resisted pushing/pulling with the arms, and no lifting greater than 10 pounds.

The panel notes that these comments are consistent with the initial view of the Internal Review Officer as set out in her first decision of July 15, 2009. She noted [Appellant's Physiatrist's] restrictions as well as [Appellant's Chiropractor's] note of the Appellant's restriction and activity using the left wrist and hand, with limited ability to grasp and with push/pull and lifting activity to be restricted to a minimum. She stated:

> "In my opinion, the weight of evidence on your file supports that you are not able to perform the essential duties of your employment as of May 1, 2009. Accordingly, I am overturning your case manager's decision and reinstating your Income Replacement Indemnity benefits. Your case manager, in consultation with your treating physicians, will determine when you are capable of returning to work on a full time basis."

[Appellant's Chiropractor] commented further in a report of May 14, 2011, when asked whether in his opinion the Appellant's symptoms would prevent her from performing all her pre-mva duties as a home care support worker. He stated:

> "...As noted in my reports of June 18, 2009 and December 19, 2009, disability is specifically related to activity using the left wrist and hand. Ability to grasp is limited. Push, pull and lifting activity with the left hand should be restricted to a minimum. I have not made any recommendation for any further restrictions. Upon review of the Home Support Worker Position Description provided, [the Appellant's] restrictions would prevent her from transferring, lifting clients, maneuvering and lifting equipment, e.g. wheel chair, walker that is necessary to provide effective, safe client care. She would be unable to safely assist clients with ambulation. Likewise [the Appellant] would be limited in her ability to physically assist in a client's rehabilitative process or perform routine housekeeping tasks as related to a safe and comfortable environment for the client. In review of Escort and Errand Services duties, [the Appellant] would be unable to physically assist a client in ambulation or transportation. [The Appellant] would be unable to assist a client when getting up. [The Appellant] is limited in actions requiring use of her left hand..."

[Appellant's Plastic Surgeon] noted, in his report dated March 13, 2012:

> "[The Appellant's] symptoms would prevent her from doing any form of heavy or repetitive lifting gripping pinching pushing pulling or twisting activities with her left upper extremity. Based on her job description this would preclude her from performing a majority of her her (sic) job after activities."

The panel is of the view that the assessments of the Internal Review Officer in July of 2009 as well as those of [Appellant's Chiropractor] and [Appellant's Plastic Surgeon] better reflect the reality of the Appellant's job, in the real world. The Appellant has to be prepared and able to fulfill a variety of tasks, which include some of medium strength, and with the restrictions necessitated by her wrist condition, we find that the Appellant was not able to do so.

The next issue which must be addressed is whether the wrist condition which prevented the Appellant from returning to her pre-motor vehicle accident occupation was a result of the motor vehicle accident.

In this regard, the panel has reviewed the sequence of events and evidence set out in the Appellant's case.

On May 1, 2009, the Appellant's case manager found that she was ready to go back to work. Then, on July 15, 2009, an Internal Review Officer overturned that decision, as she was prepared to give the Appellant:

> "...the benefit of the doubt and accept that a causal relationship existed between your left wrist injury and the treatment received with [Rehab Facility] which was required as a result of the motor vehicle accident.
>
> In my opinion, the weight of evidence on your file supports that you are not able to perform the essential duties of your employment as of May 1, 2009. Accordingly, I am overturning your case manager's decision and reinstating your Income Replacement Indemnity benefits. Your case manager, in consultation with your treating physicians, will determine when you are capable of returning to work on a full-time basis."

This was followed by a 180 day determination of the Appellant as a "Home Support Worker" on July 27, 2009 and a reinstatement of her IRI benefits on the same date.

On July 30, 2009, an MRI report of the Appellant's left wrist disclosed degenerative changes and noted the diagnosis of De Quervain's.

On August 31, 2009, [MPIC's Doctor] reviewed information obtained from [Appellant's Physiatrist] which indicated that the Appellant was not able to return to work duties as a result of problems relating to her left wrist, which he had diagnosed as De Quervain's tenosynovitis.

[MPIC's Doctor] also reviewed the MRI report which showed degenerative changes and found that based on the absence of the documentation indicating the appellant had suffered a specific injury during the rehab program, and the degenerative changes, it was medically probable that the changes were longstanding and not related to the motor vehicle accident. As [MPIC' Doctor] was of the view that the Appellant had probably only aggravated an underlining degenerative condition in the rehabilitation incident, her case manager wrote to her on September 9, 2009 indicating that any physiotherapy treatment required was not secondary to the incident in question.

[Independent Physiatrist] then reported on September 19, 2009. Although recognizing some functional limitations, he did not believe that there was a connection between the difficulties with the Appellant's left wrist and hand and the motor vehicle accident. Accordingly, the Appellant's case manager wrote to her on October 14, 2009 advising that as there was no causal connection between the left wrist and hand issue and the motor vehicle accident, there would be no further entitlement to IRI benefits or treatment, as of October 17, 2009. [MPIC's Doctor] reviewed the question again on October 23, 2009 and indicated that the Appellant was recovered from any medical conditions arising from the motor vehicle accident or the rehabilitation incident and that the medical evidence did not support the opinion that rehabilitation measures resulted in the development of the De Quervain's tenosynovitis.

Opinions followed from [Appellant's Physiatrist], [Appellant's Chiropractor] and [Appellant's Plastic Surgeon], who all took the position that it was medically probable that the rehabilitation incident was the cause of the Appellant's symptoms and conditions. For example, [Appellant's Physiatrist] noted on November 10, 2009:

> "In regards to medical diagnosis, there appears to be congruity among multiple healthcare providers about the diagnosis of a mixed picture of De Quervain's tenosynovitis and 1st CMC osteoarthritis aggravation...
>
> In regard to the particular incident at physiotherapy, upon review of the chart notes there was no subjective or objective evidence of the above diagnosis prior to the reported incident. The writer has no evidence of any other mechanism of injury and has no evidence of injury and has no evidence to doubt [the Appellant's] report...
>
> It is noted that although De Quervain's may be related to overuse or repetitive use, the pathoanatomic inflammation of tendon sheaths may occur as a result of an inciting event. This in the context of possible aggravation of preexisitng CMC OA that may be delaying recovery. Although aggravation of CMC OA or De Quervain's tenosynovitis may have occurred as a result of day to day activities, in this case it appears that the incident in question in physiotherapy was the inciting event...
>
> As such, given:
> 1. The temporal relationship to the noted incident,
> 2. the consistent clinical findings by multiple healthcare providers
> 3. the absence of clinical (subjective or objective) findings prior to the reported incident
> 4. no other reported mechanism of injury
> 5. the reported incident occurring during physiotherapy treatment for conditions arising out of the MVA in question.
>
> It does appear that on the balance of probabilities, the noted diagnoses are probably related to the MVA in question or related to the treatment of the MVA. It would be beneficial to re-initiate physiotherapy that had shown sustained benefit."

Again on December 16, 2009 [Appellant's Physiatrist] stated:

> "The clinical note refers to lifting of 10 lbs during assessment at physiotherapy. This pertains to the reported incident in question. Although active strengthening was not performed. [The Appellant] reported lifting 10 lb weights for the purpose of functional evaluation. [The Appellant] also portrays that she did make a report to MPI and her case management team regarding this assessment. At this time, I have no reason to dispute [the Appellant's] report of the incident."

The Internal Review Officer then wrote to [MPIC's Doctor], on February 10, 2010 indicating that, based upon information provided by [Appellant's Physiatrist], [Appellant's Chiropractor], and the physiotherapist's confirmation, she had accepted that there was a causal relationship between the Appellant's left wrist injury and the treatment received at [Rehab Facility]. She asked [MPIC's Doctor] whether there was, in turn, a physical impairment of function that would

preclude the Appellant from returning to her work duties. [MPIC's Doctor's] report of March 4, 2010 then proceeded to address the physical impairment of function question. He indicated:

> "Based on this review, it is my opinion the medical evidence does not indicate [the Appellant] has a physical impairment of function arising from the incident in question and/or the incidents she reported relating to treatments she received at [Rehab Facility] that would preclude her from performing the essential demands of her pre-accident employment as of November 27, 2009."

This was followed by an Internal Review Decision which concluded:

> "The weight of evidence on your file supports the decision that you were able to perform the essential duties of your employment by November 25, 2009, or quite possibly sooner."

Additional reports were then provided by [Appellant's Physiatrist] and [Appellant's Chiropractor]. These reports indicated that the Appellant, as a result of her wrist injury was not able to perform all the duties of her occupation, within her restrictions, and expressed the view that there was a connection to the motor vehicle accident or the treatment which followed.

[Appellant's Chiropractor] took a similar view to that of [Appellant's Physiatrist] in a report of May 14, 2011.

> "The first notation of a left wrist complaint was in early May 2009. My examination findings and diagnosis of [the Appellant's] left thumb and wrist condition are outlined in my reports dated June 18, 2009 and December 19, 2009. Copies of the reports are attached. In relation to disability linked to [the Appellant's] hand/wrist condition, I noted that [the Appellant] was restricted in activity using the left wrist and hand. Ability to grasp was limited. I recommended that push, pull, and lifting activity be restricted to a minimum.
>
> In answer to *your specific questions*:
>
> *In your opinion, can De Quervains tenosynovitis be caused by a specific event (such a lifting a 10 lb. Weight)?* A search of literature reveals that the cause of de Quervains tenosynovitis has not been isolated. Literature indicates that repetitive hand or wrist movement can aggravate the condition. Likewise, literature does not rule out the potential causation of de Quervains tenosynovitis from a singular event.

> *Could such an event cause an aggravation of De Quervains tenosynovitis and/or first joint carpal-metacarpal osteoarthritis?* An MRI of the left wrist was conducted on July 30, 2009 (copy attached). Severe degenerative change of the left first carpometacarpal joint was reported along with moderate degenerative changes within the distal radial ulnar joint. Such degenerative changes would pre-exist the MVA and/or incident in question. I am of the opinion that a singular event could aggravate such a pre-existing osteoarthritic condition. I am unaware of any history of pre-existing de Quervains tenosynovitis therefore I am unable to speculate whether a specific event could aggravate such a condition.
>
> *If so, is this aggravation still attributed to the incident that occurred during the physiotherapy assessment?* Such an incident would have potential to aggravate a pre-existing osteoarthritic condition. I cannot rule out the possibility that the incident could cause de Quervains tenosynovitis...
>
> *In your opinion, is [the Appellant's] left hand/wrist injury causally related to her injuries incurred in her accident of November 18, 2008?* The temporal relationship of the condition in conjunction with both an absence of clinical findings prior to the alleged incident would make me believe that on the balance of probabilities, [the Appellant's] left hand/wrist injury is related to the incident that occurred during accident related treatment."

On October 19, 2011, [Appellant's Chiropractor] commented upon MPIC's Health Care Services statement that:

> "As noted previously de Quervain's tenosynovitis is a condition that develops most often from repetitive use of the thumb and wrist. It is not common for this condition to develop after lifting a 10 lb. Weight."

[Appellant's Chiropractor] commented:

> "The author of the review is correct in this description of the "typical" causation of de Quervain's tenosynovitis, however, current literature does not rule out the possibility that de Quervain's tenosynovitis could be precipitated from a singular incident, such as lifting a 10 lb. Weight."

These reports were followed by a report from [MPIC's Doctor] dated August 15, 2011 in which he relied upon [Independent Physiatrist's] report and stated that if anything, the Appellant had only temporarily aggravated a pre-existing condition as a result of the rehabilitation treatment and that it was not medically probable that a healthcare professional would advise the Appellant not to perform her pre-accident work duties if it was her desire to do so.

Finally, [Appellant's Plastic Surgeon] provided an opinion dated March 13, 2012. He confirmed the diagnosis of De Quervain's tenosynovitis of the left wrist and described the surgical decompression which addressed that. He commented upon the Appellant's ability to perform her job and the need for physiotherapy:

> "[The Appellant's] symptoms would prevent her from doing any form of heavy or repetitive lifting gripping pinching pushing pulling or twisting activities with her left upper extremity. Based on her job description this would preclude her from performing a majority of her her (sic) job after activities.
>
> Physiotherapy treatments are important any (sic) management and care of musculoskeletal injuries. Physiotherapy would be an important component in the recovery of these injuries and wood (sic) play a role in the 5 bulleted items you identified."

He also opined regarding the likely cause of her symptoms:

> "Based on a balance of probabilities the likely cause of her symptoms is related to repetitive activity with her thumb hand and wrist. Although de Quervain's tenosynovitis can occur from an isolated incident it is more commonly associated with repetitive activity.
>
> It is certainly possible that lifting a 10 pound weight could aggravate an existing de Quervain's tenosynovitis or first CMC osteoarthritis. However it is likely that such an event would only cause a temporary aggravation.
>
> It is possible that her de Quervain's tenosynovitis could have been aggravated by the incident that occurred during the physiotherapy assessment. However as stated earlier this most probable that this aggravation would be temporary in nature as it is an isolated event.
>
> On the balance of probabilities on the information provided and the lack of any documented evidence of a pre-existing tenosynovitis it is most probable that the accident on November 18, 2008 played a roll (sic) in the development of her de Quervain's tenosynovitis. Although there may not have been clinical evidence of tenosynovitis at the time of the accident her injury may have changed the biomechanics of her left upper extremity causing her to develop the tenosynovitis in the first extensor compartment at a later date.

On June 19, 2012, [MPIC's Doctor] reviewed [Appellant's Plastic Surgeon's] report and indicated that it was once again his opinion that the probable cause of the relationship between

the incident in question and/or the treatments the Appellant received to address the medical conditions arising from the incident and the diagnosed De Quervain's tenosynovitis could not be established.

The panel has weighed all of the evidence, including the Appellant's description of her symptoms and their onslaught, the initial position of the Internal Review Officer that these were caused by the motor vehicle accident and the evidence of her caregivers that the condition was connected to the motor vehicle accident or treatment of motor vehicle accident related injuries.

We have weighed all of this evidence against the contrary opinions provided by [MPIC's Doctor] and [Independent Physiatrist].

We find as a result that the appellant has met the onus upon her of showing, on a balance of probabilities, that this condition was a result of the motor vehicle accident. We have placed particular weight upon the opinion of [Appellant's Plastic Surgeon], with extensive experience in hand surgery. [Appellant's Plastic Surgeon] examined the Appellant and was also able to review an extensive package of documents which included notes and reports from [Appellant's Physiatrist], [Appellant's Chiropractor] and [MPIC's Doctor]. He also reviewed the position description for the Appellant's job. His final conclusion was that:

> "On the balance of probabilities based on the information provided and the lack of any documented evidence of a pre-existing tenosynovitis it is most probable that the accident on November 18, 2008 played a roll (sic) in the development of her de Quervain's tenosynovitis. Although there may not have been clinical evidence of tenosynovitis at the time of the accident her injury may have changed the biomechanics of her left upper extremity causing her to develop the tenosynovitis in the first extensor compartment at a later date."

Accordingly, the Commission finds that the Appellant is entitled to expenses associated with treatment of her left wrist condition and IRI benefits for the period from November 28, 2009 to February 29, 2012. The panel will refer the assessment and calculation of these benefits back to the Appellant's case manager for determination.

The Appellant's appeal is allowed and the decision of the Internal Review Officer dated March 15, 2010 is overturned.

Dated at Winnipeg this 18th day of December, 2012.

LAURA DIAMOND

NEIL COHEN

BOBBI ÉTHIER