Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-060

PANEL:	**Ms Laura Diamond, Chairperson** **Ms Jacqueline Freedman** **Ms Janet Frohlich**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf;** **[text deleted] appeared as an Interpreter** **[text deleted] appeared as an Interpreter;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Kirk Kirby.**
HEARING DATE:	**April 30 and May 21, 2013**
ISSUE(S):	**1. Entitlement to Income Replacement Indemnity benefits for the period January 2002 to May 2005.** **2. Entitlement to further treatment benefits for the Appellant's low back and right knee**
RELEVANT SECTIONS:	**Sections 110(1)(a) and 136 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 injured in a motor vehicle accident on January 16, 1996. As a result of the accident, he experienced, neck, left shoulder and lower back pain, dizziness, headaches, panic attacks and depression. He was in receipt of treatments and Income Replacement Indemnity ("IRI") benefits from MPIC.

On December 16, 1999, the Appellant was injured in a second motor vehicle accident. He injured his right knee and right shoulder.
On January 27, 2000, the Appellant was injured in a third motor vehicle accident, complaining of neck pain, left shoulder pain and headaches.

A right knee arthroscopy was performed in May of 2001 by [Appellant's orthopedic surgeon].

At the time of the motor vehicle accident, the Appellant was employed as a painter with [text deleted]. This job was classified at a "medium work" level. The Appellant was off work and in receipt of IRI benefits until September 2001, while he received physiotherapy and medical treatment. He returned to work in September of 2001, but was disciplined in November 2001, due to stress, depression, alcoholism and family issues. He was admitted to hospital in January 2002 to deal with depression, suicidal ideation and stress. The Appellant was not in receipt of IRI benefits at that time, but received some Social Assistance benefits through October of 2004. He also pursued a grievance with his employer, through his Union, and was reinstated to his employment in May of 2005.

On August 18, 2005 the Appellant's case manager issued a decision terminating his entitlement to Personal Injury Protection Plan ("PIPP") benefits on all claims (which included IRI benefits and physiotherapy treatment benefits) as MPIC had found the Appellant had provided them with false or inaccurate information and was deemed capable of holding his pre-accident employment. In reaching this conclusion, the case manager relied upon the reports on the Appellant's file including surveillance reports and surveillance videos in reaching this conclusion.

The Appellant filed an Application for Review in regard to the case manager's decision on October 12, 2005 requesting IRI payments from January 2002 until May 2, 2005 and further medical treatment for his motor vehicle related injuries.

On April 27, 2007, an Internal Review Officer for MPIC reviewed the case manager's decision and the Appellant's file. The Internal Review Officer was not satisfied that the file information supported the finding that the Appellant knowingly provided false or inaccurate information to MPIC. However, the Internal Review Officer upheld the case manager's decision, confirming the denial of IRI benefits, finding that the medical evidence and the videos demonstrated that the Appellant was able to perform work consistent with light to medium activities. A review of the totality of the medical evidence led him to conclude that the Appellant could have worked as a painter between January 2005 and the time he eventually returned to work in May 2005.

The Commission notes that at the hearing of the Appellant's appeal, the parties agreed that the relevant time period before the Internal Review Officer should have been January 2002 to May 2005.

The Appellant's case manager provided another decision on July 15, 2009. The case manager referred to a medical review by MPIC's Health Care Services team dated January 16, 2005.

> "At the October 19, 2000 evaluation, the sports medicine physician opined that [the Appellant's] right knee symptoms were a result of patellofemoral osteoarthritis, lateral meniscus degenerative tear and lateral compartment OA (osteoarthritis/osis)...
>
> > <u>Comment</u>
> > The reported osteoarthritis pre-dated the December 16, 1999 motor vehicle accident.
>
> [The Appellant] was examined by an orthopedic surgeon initially on November 13, 2000 (report of August 8, 2001), subsequent to which [the Appellant] was referred to physiotherapy to try to maximize his function.

> At a February 21, 2001 follow up with the orthopedic surgeon, it was noted that [the Appellant] felt he had made no progress in function with more exercises. The examination referred to tenderness anteriorly and pain posteriorly, with hesitant range of motion and no effusion. A right knee arthroscopy was proposed to deal with anything that was correctable.
>
> It appears that [the Appellant] underwent right knee arthroscopic surgery some time between April 24, and May 15, 2001. A June 14, 2001 prescription from the orthopedic surgeon to physiotherapist indicated that at surgery, the right knee lateral compartment was debrided."

The case manager concluded that the Appellant's lower back symptoms and ongoing complaints of right knee problems were not causally related to the motor vehicle accidents. Accordingly, the case manager indicated that the Appellant was not entitled to further treatment, in any form, relating to his low back and right knee.

The Appellant filed an Application for Review from this decision and, on February 9, 2010, an Internal Review Officer for MPIC reviewed the medical information on the Appellant's file. He concluded that the case manager's decision regarding the Appellant's entitlement to physiotherapy was a valid decision. The MPIC Health Care Services team review had identified pre-existing degenerative processes involving the Appellant's right knee and the Internal Review Officer concluded that it was medically probable that his ongoing knee complaints were due to degenerative changes and not the result of a motor vehicle accident soft tissue trauma.

Regarding the Appellant's low back, the Internal Review Officer referred to the opinion of MPIC's Health Care Services team that low back pain was only documented following the 1996 accident. This resolved after a few months, and the Appellant's injuries following the next two accidents involved only his right knee, right shoulder and neck. Accordingly, the Internal Review Officer concluded that the Appellant's current knee and back complaints were not related to any of the motor vehicle accidents based on medical probability.

It is from these decisions of the Internal Review Officers that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He described his physical injuries following the first motor vehicle accident in 1996, followed by an absence from work from January until August 1996. He received treatment to his back, knees and shoulder, as well as some psychological treatment. The Appellant explained that he was depressed following the motor vehicle accident. There was a shut-down approaching at work, so he travelled to [text deleted] to visit his family, hoping that this would help with his depression. He went to [text deleted] for five weeks hoping that this would assist with his depression.

Upon his return, he returned to work full-time. He explained that he had been working at [text deleted] since 1992 and had not missed any work until the motor vehicle accident in 1996.

The Appellant stated that he continued to suffer from pain until a second motor vehicle accident occurred in 1999, injuring his knee, lower back and shoulder. He received physiotherapy treatment, but had another motor vehicle accident five weeks later, in January of 2000.

Following these motor vehicle accidents the Appellant described treatment with physiotherapy and acupuncture for his knee, as well as psychiatric and psychological treatment. He continued to see his family doctor, [Appellant's doctor #1], and also went to see [Appellant's orthopedic surgeon], an orthopedic surgeon at the [text deleted], who performed surgery on his knee in May 2001.

The Appellant indicated that he needed physiotherapy treatment after this surgery, but he did not receive any, as his case manager from MPIC indicated that he had had enough physiotherapy treatment.

The Appellant indicated that although his doctor recommended a graduated return to work program, his case manager did not agree with this, as [Appellant's orthopedic surgeon] had indicated he could return to work.

The Appellant indicated that he returned to work in September 2001, but found it very difficult, due to his physical and psychological condition. In November, he didn't feel well and didn't go to work, calling in sick. Initially, he was terminated from his employment, but he indicated that his workplace turned this into a two week suspension and he returned to work.

The Appellant described this as a very hard period in his life, even though he really liked his work. He was very depressed and having a hard time in his life and indicated that by January 3, 2002 he felt very depressed without the strength to live. His medication was not helping him when he returned to work so he had started drinking alcohol. In January, he drank a lot and took some pills to commit suicide. He was taken to the [Hospital #1] and then to [Hospital #2] to see [Appellant's psychiatrist]. He remained in hospital for four weeks, but still had problems with depression and alcohol after his release. He stated that in the fall he lost his job. However, his union appealed to the company to allow him to return to work. During this time, he had therapy, and stopped drinking alcohol, while waiting to see if he could get his job back.

MPIC sent him for psychiatric and psychological assessment, but he was not receiving physiotherapy treatment. In November 2003 he was contacted by [rehab clinic #1] who

indicated that because he had lost his job due to motor vehicle accidents, they were to try and help him find work or help him adjust to a different type of work.

The Appellant indicated that the union's efforts with his employer were successful and he returned to work in 2005. However, he indicated that he was seeking IRI benefits between January 2002 and May 2005. The Appellant confirmed that this was what he had sought in his Application for Review, and that his request for benefit entitlement was not limited to the period January and May 2005 as set out in the Internal Review Decision of April 27, 2007.

The Appellant indicated that he had a knee replacement and that he was not currently working. However, he no longer drinks alcohol, and is using the [text deleted] for assistance with his pain.

The Appellant explained that the pain and depression that he felt following his motor vehicle accidents led him to use alcohol and created the need for him to receive psychiatric and psychological assistance, which was initially supported by MPIC. Prior to the motor vehicle accidents, he had never had any problems with alcohol or depression. However, the medicine he was taking after the accidents did not help with his pain and he started drinking alcohol to deal with that and his depression.

Upon cross-examination, the Appellant was asked several questions regarding surveillance reports and videotape evidence which showed him performing activities such as driving, walking and, in particular, shovelling and pushing materials (which were identified as wood pieces) into a trailer attached to his vehicle. He was also shown attending MPIC lots where he viewed vehicles and it was suggested to him that he had indicated that he was purchasing and fixing up vehicles for resale.

The Appellant explained that all the activities shown on the videotapes were performed within his restrictions, and that he was careful to protect his knee, while still walking with a limp. He also explained the painkillers and the leg braces which he was using to help with his knee pain.

The Appellant was also asked about an assessment performed by physiotherapist [Appellant's physiotherapist], when [Appellant's physiotherapist] reported some extreme pain focused behaviours by the Appellant which seemed inconsistent with the extent of his actual reported injuries. The Appellant explained that some of the physical examination performed by [Appellant's physiotherapist] caused him a great deal of pain and difficulty.

The Appellant also responded to a line of question which suggested that his problems with depression and alcoholism resulted from family problems, and more specifically from problems with his girlfriend and daughter in [text deleted]. Counsel for MPIC suggested to the Appellant that his bout of depression was triggered by his girlfriend breaking up with him and that this was what led to his problems with alcohol and exacerbation of his depression, leading to his admission to the hospital. The Appellant, while reticent and reluctant to disclose and discuss the difficulties with his girlfriend, maintained that the motor vehicle accident caused his depression and pain and changed his life. They led to inactivity and financial problems, which contributed to his use of alcohol and worsening depression. He indicated that he had a good record at his job prior to the motor vehicle accidents, and it was these problems that led to his alcoholism and subsequent termination.

The Appellant's indexed file also contained extensive medical information, in regard to both his physical and psychological difficulties. It included chart notes and reports from family practitioners such as [Appellant's doctor #1], [Appellant's doctor #2]; orthopedist, [Appellant's

orthopedic surgeon]; psychologists, [MPIC's psychologist], [Appellant's psychologist #1], [Appellant's psychologist #2]; psychiatrist, [Appellant's psychiatrist]; physiotherapists, occupational therapists, and hospital reports.

The Appellant submitted that he had not received the kind of therapy he needed after the motor vehicle accidents for this kind of injury. He maintained that following his surgery with [Appellant's orthopedic surgeon] in May 2001, [Appellant's doctor #1] had recommended further physiotherapy, but because MPIC had failed to pay for this, he had not received any.

The Appellant submitted that he had received ongoing treatment for depression with [Appellant's psychologist #2], but had not received sufficient physiotherapy.

Prior to the motor vehicle accidents, he had not had any problems with his knees or with depression, and, he submitted, the need for treatment for these conditions was a result of the motor vehicle accidents. As a result of the motor vehicle accidents he had very serious, severe depression and he had not been able to lead a normal life. He is still taking medication for pain and medication for depression. This is expensive medication which he cannot afford and he cannot plan what he will do tomorrow because he does not know what he will be able to do, or if he will be able to do anything at all.

He does not have the full use of his leg, and submitted that the motor vehicle accident changed his life completely.

The Appellant submitted that his appeal should be upheld and that he should be entitled to receive IRI benefits between January 2002 and May 2005, as well as physiotherapy treatment benefits for his low back and right knee.

Evidence and Submission for MPIC:

MPIC relied upon evidence submitted by its Health Care Services consultants, [MPIC's doctor #1] and [MPIC's doctor #2], as well as an independent assessment by the psychologist, [independent psychologist], a report from physiotherapist, [Appellant's physiotherapist]. MPIC also referenced evidence provided by the Appellant's own caregivers such as [Appellant's doctor #1], [Appellant's orthopedic surgeon], [Appellant's psychologist #1] and [Appellant's psychiatrist].

MPIC also provided surveillance reports and videotapes showing the Appellant engaging in physical activities such as walking, squatting, shovelling, wood etc.

Counsel for MPIC noted that although the Appellant claimed MPIC had failed to provide the required physiotherapy treatment following his arthroscopic surgery in May 2001, a case management note dated September 5, 2001 indicated that the case manager had advised the Appellant that if his doctor suggested physiotherapy it would be agreed to support his return to work.

Then, a note from [text deleted] dated September 10, 2001 indicated that [Appellant's orthopedic surgeon] had sent the Appellant back to work and [Appellant's orthopedic surgeon's] report of September 29, 2005 (describing the previous assessment in 2001 and the right knee arthroscopy) did not contain any recommendation regarding physiotherapy, but rather indicated that

[Appellant's orthopedic surgeon] had encouraged him to be as active as possible and use anti-inflammatories as needed.

In regard to the Appellant's entitlement to IRI benefits between January 2002 and May 2005, counsel noted the many references in the medical information on the Appellant's index file showing his ability to work in that period of time. [Appellant's orthopedic surgeon] had indicated that the Appellant was ready to return to work in September of 2001 [text deleted]). However, at that time, the Appellant got into difficulties with his drinking problem.

Counsel for MPIC submitted that reports regarding his admission to [Hospital #1] and [Hospital #2] indicate that the reason for his consumption of alcohol and the problems which he experienced all related to family problems and his girlfriend's unwillingness to visit Canada and the termination of their relationship.

In 2002 the Appellant's employer terminated his employment because of his absenteeism and failure to comply with rules regarding absences. He was hospitalized because of psychiatric issues regarding his girlfriend and their relationship.

Later reports showed that the Appellant was able to return to work. For example, in July of 2003, [Appellant's psychiatrist] indicated, in a telephone conversation with the case manager, that the Appellant was looking for work, although he was no longer employed by the same employer. In a report dated August 19, 2003 [Appellant's psychiatrist] indicated that the Appellant was currently able to work.

Assessments provided by [rehab clinic #1] dated November 24, 2003 and December 16, 2003 reported on the Appellant's physical functions, including his right knee. He demonstrated excellent tolerance for sitting, walking, kneeling, climbing, lifting and carrying 50 pounds, as well as ability to crouch with symmetrical weight bearing. This level of function placed him in the medium strength classification, and counsel noted that his employment at MCI was also within the medium strength level.

A further report from [rehab clinic #1] concluded that the Appellant was capable of functioning at a medium strength demand and that he would be capable of resuming work in the painting occupation.

This was followed by an assessment performed by [Appellant's physiotherapist] on January 10, 2005. The Appellant had indicated to [Appellant's physiotherapist] that he may be able to return to employment but that he would need assistance and help.

The Appellant's own statement, provided October 4, 2004, indicated that he could do all his cleaning, cut the grass and was able to sit for approximately two hours. He indicated that bending and squatting were difficult because of his knee and that he could not shovel. However, counsel submitted that it was important to note that the surveillance video showing the Appellant walking, bending, shovelling, etc. stood in stark contrast to these statements.

Surveillance video clearly showed the Appellant doing all of the things that he had claimed to be incapable of doing, for sustained periods of time. He was shown filling a large trailer by shovelling in cuts of wood, as well as squatting to tie up the load on the trailer without hanging on, grimacing, or displaying any difficulty. He stood back up unassisted without showing any

outward indications of pain, stiffness or difficulty. This was clearly behaviour which was inconsistent with the Appellant's self-reporting inconsistent with his complaints of not being able to do any physical work. Counsel maintained that these videos speak the loudest regarding the Appellant's ability to function and carry on as a painter at [text deleted]. Clearly, the Appellant was more active than what he indicated in terms of his abilities.

His indication to [independent psychologist] (noted in [independent psychologist]'s report of April 2005) that he was not very active, as well as the pain behaviours demonstrated to physiotherapist [Appellant's physiotherapist] in January 2005 were quite different from the activities displayed on the videotapes. The Appellant's pain reports and his behaviour with [Appellant's physiotherapist] appear completely out of proportion with what was observed functionally in the surveillance videotapes and there is a glaring disparity between the two.

Counsel also submitted that although the Appellant maintained that his admission to the [Hospital #1] and [Hospital #2] in January 2002 was about his chronic pain and depression due to the motor vehicle accident, the Appellant was evasive when asked about the connection it had to his family problems. The evidence before the Commission says otherwise, it was submitted. The indexed documents show that the Appellant's intermittent absences from work between January 2002 and May 2005 had nothing to do with any of the motor vehicle accidents. They were quite clearly related to his difficulties with his girlfriend and his family problems.

Accordingly, counsel submitted that the Appellant was clearly able, from a physical point of view, to return to work when [Appellant's orthopedic surgeon] told him to go back to work in 2001. From a psychological point of view, the depression and alcoholism which led to the

Appellant's termination from his employment in January of 2002 was not related to the motor vehicle accident, but was caused by ongoing family problems.

Accordingly, counsel submitted that the Appellant had failed to meet the onus upon him of showing that he should be entitled to further treatment benefits for his low back and right knee or that he should be entitled to IRI benefits for the period January 2002 to May 2005. Accordingly, the Internal Review decisions should be upheld and the Appellant's appeals dismissed.

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;
>
> (b) the purchase of prostheses or orthopedic devices;
>
> (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
>
> (d) such other expenses as may be prescribed by regulation.

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officers erred in concluding that the Appellant was not entitled to further treatment benefits for his low back and right knee or IRI benefits for the period between January 2002 and May 2005.

The panel has reviewed the evidence on the Appellant's indexed file, as well as the testimony and submission of the Appellant at the hearing and the submission for MPIC.

The panel finds that the evidence does not establish that the Appellant was unable to work or required further treatment as a direct result of physical disability resulting from the motor vehicle accident.

A review of the surveillance reports and videotapes, the reports from [rehab clinic #1] and physiotherapist [text deleted], as well as [Appellant's orthopedic surgeon's] reports, do not disclose any lasting physical impairments arising from the accidents which would have prevented the Appellant from working at his medium strength job between January 2002 and May 2005, or require further physiotherapy treatment.

The evidence established that, by September 2001, [Appellant's orthopedic surgeon] had recommended that the Appellant return to work. [Appellant's orthopedic surgeon] confirmed the degenerative nature of the condition and encouraged him to be as active as possible. The panel finds that the Appellant failed to establish, on a balance of probabilities, that [Appellant's orthopedic surgeon] had prescribed further physiotherapy which MPIC failed to provide or that his knee problems and the need for surgery were caused by the motor vehicle accidents.

[MPIC's doctor #1's] report identified the effect of pre-existing degenerative changes in the Appellant's knee.

The assessments by [rehab clinic #1] in November and December of 2003 compared the Appellant's abilities with his pre-motor vehicle accident work and concluded:

> "It is my opinion that [the Appellant] is capable of returning to his pre-mva work as a painter depending upon the specific demands of the employer. He meets the physical abilities and experience requirements, however additional functional information related to the knee would assist in focusing the job search more specifically, well within his abilities."

Although [Appellant's physiotherapist] was unable to complete a physical examination, due to delays created by the Appellant's pain focused behaviour and self-limiting behaviours, the surveillance reports and videotaped evidence were consistent with the conclusions provided by [rehab clinic #1] regarding the Appellant's physical ability to return to his pre-accident employment. Accordingly, the panel concludes that, based upon the evidence regarding the Appellant's physical condition, the Appellant was physically able to return to work and further physiotherapy treatment was not medically required.

However, the panel has reached a different conclusion in regard to the Appellant's psychological condition.

The Internal Review Officer concluded that, based on a comprehensive review by [MPIC's doctor #1], dated June 16, 2005, the only thing that may have prevented the Appellant from performing his job as a painter in 2005 was related to physical symptoms that were unrelated to the motor vehicle accident.

The Internal Review decision considered whether the Appellant was unable to work between January and May 2005. However a review of the file shows that the relevant period addressed by the Appellant's case manager and for which the Appellant submitted an Application for Review was January 2002 to May 2005.

The Appellant's case manager, in a decision dated August 18, 2005, had set out the Appellant's position regarding his psychological difficulties:

- "... You have developed depression as well as began drinking heavily due to the pain you relate to your motor vehicle accident injuries
- You were hospitalized in January, 2002 as well as October, 2002 due to your depression and alcoholism
- You lost your employment due to your alcoholism..."

The Internal Review Officer stated:

> "A March 4, 2003, a letter from psychiatrist, [Appellant's psychiatrist] noted that you were unable to work from February 50 March 2002 and April 22 – 28, 2002.
>
> An April 13, 2007 note from your family doctor, [Appellant's doctor #1], who indicated that you still see him for depression, back pain, and right knee pain.
>
> None of these reports touch on your ability to work in 2005."

It is not clear whether the Internal Review Officer understood or properly addressed the period of time for which the Appellant was seeking IRI benefits. The parties before the Commission agreed that the relevant period of time was between January 2002 and May 2005, and not January 2005 to May 2005.

The Internal Review Officer also failed to properly consider the Appellant's psychological difficulties and their effect upon his ability to work.

An independent assessment by [independent psychologist] on April 16, 2005 confirmed the Appellant's depressed condition:

> "Currently, [the Appellant] endorses symptoms of depression consisting of depressed mood most of the day nearly every day, marked reduction in his motivation, his sleep, his energy, his concentration and his self-esteem. He also reports that he has some flashbacks and nightmares related to the MVA's, some hypervigilance, which used to be much worse, and no specific avoidance."

In regard to the Appellant's ability to work in 2002, [independent psychologist] noted:

> "Are there objective psychological findings supporting an impairment of function which would preclude [the Appellant] from returning to his full work duties as a painter as of October 2002? As of October 2002, there were psychological factors present that would have precluded [the Appellant] from performing his work duties. Specifically, at that time, [the Appellant] was hospitalized from October 6 to 13, 2002, apparently due to significant symptoms related to alcohol abuse, depression and suicidality. During the dates of his hospitalization, he would not have been able to perform the essential tasks of his occupation, and work duties at that time may have posed a safety risk for the patient or his co-works (sic).
>
> [The Appellant's] psychiatric condition immediately leading up to, and following this hospital admission are not very clear. There are clinical notes from [Appellant's psychiatrist] that indicate an increasing problem with alcohol abuse. Prior appointments had been every several months, but the frequency of appointments was increased for that brief period of time. However, it is not clear whether he was functioning well enough to be at work during that time period. By [the Appellant's] history, he missed a lot of time from work, which was apparently due to the alcohol use. It is quite likely that he was impaired for that reason for a period of time around October, 2002. It is difficult to assess whether his work-place impairments lasted any longer than the hospitalization that occurred. Review of the hospital records from that admission may well be very helpful in further elucidating an answer to this question.

In denying further IRI benefits, the Appellant's case manager reviewed the Appellant's medical file and concluded:

> "The medical information indicates that your psychiatric symptoms were in remission prior to the events leading up to your hospitalization in 2002. As such, your depressive episodes of 2001 and 2002 are not causally related to the motor vehicle accidents."

The Internal Review Officer upheld this decision.

Accordingly, the panel has carefully reviewed the evidence in regard to the case manager's position that the Appellant's psychiatric symptoms were not causally related to the motor vehicle accident.

In this regard, the panel has reviewed the independent assessment provided by [independent psychologist], as well as a report provided by [MPIC's doctor #2] for MPIC's Health Care Services team. We have further reviewed reports and chart notes on the Appellant's indexed file which were prepared by psychologists such as [MPIC's psychologist], [Appellant's psychologist #1] and [Appellant's psychologist #2], psychiatrist [Appellant's psychiatrist] and physicians, [Appellant's doctor #1] and [Appellant's doctor #2]. The panel reviewed references and opinions regarding the Appellant's psychological status before the motor vehicle accident of 1995 through to the Appellant's hospitalization in 2002, in order to examine and assess MPIC's position that the Appellants' psychological difficulties were related to his alcoholism, family and relationship problems and were not connected to the motor vehicle accident.

The panel's review of the evidence, as set out below, does not support MPIC's position that the Appellant had recovered from the depression he suffered following the motor vehicle accidents and that the psychological difficulties which may have prevented him from working between January 2002 and May 2005 were not related to the accidents. Rather, the panel's review of the evidence shows that the Appellant did not suffer from any documented psychological issues prior to the motor vehicle accident and that he suffered from accident related depression, documented by his caregivers, which periodically escalated and increased in severity between 1996 and 2002.

A review of clinical notes from the Appellant's physician, [Appellant's doctor #2], from the period of June 3, 1995 to April 3, 2001 does not disclose any references to depression or mental health issues in 1995, or prior to the motor vehicle accident of January 16, 1996. Following notations of neck pain in January of 1996, the Appellant was prescribed Lorazepam, an anti-anxiety medication.

As a result of concerns regarding self-limiting behaviour during the Appellant's post accident rehabilitation program at the [rehab clinic #2], the Appellant was seen by a psychological associate, [Appellant's psychologist #2]. [Appellant's psychologist #2] reported to psychologist [MPIC's psychologist] on July 29, 1996 indicating that the Appellant had been suffering from intense anxiety which fit the DSM-IV criteria for panic attacks, and was related to the motor vehicle accident.

> "...More detailed examination revealed that his symptoms fit DSM-IV criteria for Panic Attacks. They are: a) very intense apprehension and a feeling that his life/survival is in danger, b) difficulty breathing (dyspnea) / at times choking sensations ("as if something is in my throat"), c) chest tightness and pain, d) heart pounding, e) shaking hands, f) hot flashes, g) sweating, h) blurred vision. [the Appellant] believes that the blurred vision is associated with intense neck pain, it might, however, as it is often the case, coexist as one of the panic attack's symptoms. [the Appellant] reported that when anxiety and sense of danger become intense he "has to leave the house". For a few months following the accident, [the Appellant] experienced anxiety while driving his car or when being a passenger in somebody's car, but these symptoms do not pose a problem for him now.
>
> [the Appellant] revealed that following the accident, especially during the winter months, he felt depressed. Loss of rhythm and self-esteem that he derived from work, being stranded at home, and having to depend on others resulted in development of a negative mood...
>
> Summary
> [the Appellant] presents with a number of symptoms that appear to be related to the motor vehicle accident that he experienced on January 16, 1996..."

[MPIC's psychologist] reported on August 19, 1996, attaching [Appellant's psychologist #2's] assessment and recommending to MPIC that the Appellant receive therapy sessions to reduce anxiety and panic symptoms.

[Appellant's doctor #2's] notes contain further references to pain and depression following the motor vehicle accident. The notes indicate that the Appellant was then prescribed an anti-depressant, Zoloft, in January of 1997. He was still being treated with anti-depressants through December 1997. The Appellant was then prescribed Effexor, another anti-depressant and there is an indication that his depression began to improve in 1998. The records indicate that his depression was steady on Effexor, with few psychological difficulties, if any, noted through the balance of 1998 and 1999.

The Appellant was then injured in two motor vehicle accidents on December 16, 1999 and January 27, 2000. The records then indicate he had difficulty with sleeping.

A psychology intake report was provided by [Appellant's psychologist #1], of the [rehab clinic #3], on June 6, 2000, in order to determine the Appellant's appropriate re-entry into a reconditioning/work hardening program at the [rehab clinic #3]. The report described the Appellant's complaints of pain as well as his complaints about having poor, non-restorative sleep. Pain medications and anti-depressants taken by the Appellant were listed. [Appellant's psychologist #1] noted:

> "At the present time, this writer has some concerns about [the Appellant's] progression into a reconditioning or work hardening program. It is my impression that [the Appellant] currently is significantly dysphoric, and while he has begun an antidepressant, it has not been taken long enough to have significant therapeutic effects. As such, I believe that [the Appellant] will need to be on his Paxil for an additional six to seven weeks, prior to any significant antidepressant effects being realized. As well, [the Appellant] is currently taking multiple benzodiazepines and antidepressant to assist with

> sleep, and this writer has some concerns with regards to the medications as they are currently being prescribed."

[Appellant's psychologist #1] recommended that a [text deleted] psychologist be retained to assist the Appellant's recovery.

The [rehab clinic #3's] physiotherapist, [text deleted] reported on August 25, 2000 noting that the Appellant had presented in an anxious state on a few occasions with a high pain experience and that he had been referred to [Appellant's doctor #3] to help with this and with headaches.

[Appellant's doctor #3] assessed the Appellant and reported on September 7, 2000 that the Appellant suffered from sleep disturbance with depressive features. He recommended that the first step was to optimize the Appellant's sleep and depression and that once his depressive symptoms were improved he might benefit from a course of dry needling.

On September 22, 2000, Karen Leach, the occupational therapist with the [rehab clinic #3] reported to the Appellant's case manager that there were existing psychological barriers interfering with the Appellant's return to work which the psychology team was actively addressing.

[Appellant's psychologist #1] reported on September 28, 2000 indicating that, emotionally speaking, the Appellant appeared unstable with what appeared to be a sub-threshold level of dysphoria, complete depression and ongoing ruminative worry. He indicated that issues covered in psychotherapy included pain management, sleep hygiene, headache pain, anxiety/worry, as well as depressive symptomatology.

[Appellant's doctor #3] reported on November 30, 2000 that while the Appellant's knee pain was improving he continued to manifest a mood disturbance.

A telephone call from the occupational therapist, [text deleted], to the case manager on December 14, 2000, indicated that the Appellant's mood had deteriorated and that [Appellant's doctor #3] had arranged for him to see a psychiatrist. [Appellant's doctor #3] reported some improvement on December 20, 2000, but a report from the psychiatrist, [Appellant's psychiatrist], dated January 3, 2001 described:

> "Symptom review of depression indicates initial and middle insomnia [for which the Amitriptyline has been at least partly helpful], and atypical crying spells. These usually occur when he thinks about having been limited by his physical symptoms. Energy and drive were described as adequate, and in fact he does not feel that his mood is depressed. He describes difficulty concentrating because of worries about not being able to make ends meet financially. When asked specifically he denied death wishes and suicidal thoughts. There is no history of psychotic symptoms."

[Appellant's psychiatrist] concluded:

> "Based upon [the Appellant's] presentation, history, and collateral information from his brother, my impression is that he is suffering from symptoms of a major depressive disorder, partially improved due to antidepressant medication. Given the current dosage of Paxil and the possible adverse effects, I would not suggest increasing the dosage further. However, it appears to have helped and I would be wary to suggest any decreases at this point. I would suggest the addition of a second antidepressant..."

[Appellant's doctor #2's] notes from April 3, 2001 indicated that the Appellant was suffering from "acute depression" as well as alcohol abuse.

On May 4, 2001, [Appellant's psychologist #1] reported, requesting eight continuing psychotherapy sessions to address several issues including pain management, sleep difficulties, ruminative anxiety. He noted:

> "...[the Appellant's] emotional presentation has been consistent with clinical depression...
>
> It therefore appears that [the Appellant] is still suffering from some clinical effects of Post-traumatic Stress, also subthreshold for a diagnosis of PTSD..."

A note from [Appellant's doctor #1], of the [text deleted], dated June 8, 2001 indicated that the Appellant suffered from depression with alcoholism and suicidal plans.

On June 19, 2001, the Appellant's case manager noted that in regard to the request for eight psychotherapy sessions, [MPIC's doctor #1] suggested that a "paper assessment" be done and the case manager indicated an intention to have this done by [MPIC's psychologist #2].

It appears from the Appellant's indexed file that although the Appellant did have knee surgery and the case manager wrote to [MPIC's psychologist #2] on January 31, 2005 requesting an opinion regarding the Appellant's depression as well as its connection to the motor vehicle accident, there was no record on the Appellant's indexed file of a Health Care Services review completed by [MPIC's psychologist #2].

The evidence indicated that the Appellant than encountered difficulties with his girlfriend in [text deleted] (the mother of his daughter), in October of 2001. He was disciplined by his employer, for absenteeism, on November 14, 2001 and hospitalized on January 8, 2002 following a suicide attempt.

Counsel for MPIC submitted that it was this episode with the Appellant's girlfriend, in October of 2001, that was the cause of the depression and alcoholism from which the Appellant suffered and which prevented him from working after January 2002.

However, the panel's review of the evidence shows that this event was not the initial or only stressor contributing to the Appellant's depression. The psychological condition of the Appellant between October 2001 and January 2002 was not an isolated event. The Appellant's

reaction to the problems with his girlfriend was more severe than the earlier depressive and alcoholic symptoms he had suffered, but it is clear from the evidence that for a long period between 1996 and 2001 (with the possible exception of the period between 1998 and the second accident in 1999) the Appellant was struggling to deal with pain, mental health issues, depression and alcoholism. From their initial onset, these difficulties have been attributed by psychologists to the motor vehicle accidents. The panel finds that there was a continuous, direct correlation between the Appellant's first episode of depression following the motor vehicle accident in 1996 and the escalation of symptoms and decline of his mental health following the motor vehicle accidents in 1999 and 2000.

Both [MPIC's doctor #2] and [independent psychologist] addressed the issue of the causal relationship between the claimant's depression, the January 2002 episode of suicidal ideation and alcohol abuse and the motor vehicle accidents. [MPIC's doctor #2] stated:

> "...Could the motor vehicle collision have acted as a stressor to the claimant? The ability for a motor vehicle collision to act as a stressor, and to which degree, is based upon a host of independent and inter-related variables. Such factors may include vehicular damage, bodily injury, association of past events, trauma to other individuals, current individual life circumstances and past experiences to name a few. In addition, what may act as a stressor for one individual may not be for another. Given the above rationale in conjunction with the claimant's motor vehicle collision of January 27, 2000, given the benefit of the doubt, this collision would be a probable mechanism for the development of a psychosocial or life stressor.
>
> Analysis of the Effect
> The effect (i.e. diagnosis) has been discussed previously. All the effects have been established by medical means and are therefore probable. Pre-existing conditions also need to be considered when attributing the various causes to a particular effect. As stated by [Appellant's psychiatrist] in his Discharge Summary, the felt that eh claimant was "...somewhat fragile, and deteriorates easily..." in addition to demonstrating signs of a passive-dependent personality. Reference was made during the [Hospital #1] Initial Database History and Physical that the claimant was referred to a psychologist six years ago subsequent to a motor vehicle accident but was not treated. Based upon this information, there exists a possibility of either pre-existing subclinical depression or trains which may predispose to depressive episodes."

[MPIC's doctor #2] indicated that the fact that the Appellant was functioning well approximately six months prior to his mood deterioration would provide a poor overall temporal relationship between the alleged cause and effects with regard to the accident. However, he also indicated that further information should be ascertained as to the Appellant's full functional, social and psychiatric status through [Appellant's psychiatrist's] clinical notes. He indicated that it must be established whether the Appellant's two previous motor vehicle collisions were a causal factor in his initial onset of depression.

[Independent psychologist] provided an independent assessment dated April 24, 2005 which directly addressed whether the Appellant's depression was related to the motor vehicle accident. He indicated that there was no evidence of a psychiatric history prior to the motor vehicle accident in 1996, despite the availability of clinical notes back to 1995. The Appellant suffered deterioration in his mood and his psychosocial and emotional functioning following his accident in 1996 and was diagnosed with major depression and started on anti-depressants.

[Independent psychologist] recognized that the Appellant's functioning seems to have improved to a significant degree where he was able to return to work and function well for a period of several years. Then:

> "...again, following motor vehicle accidents in 1999 and January 2000, he again had deterioration in his psychosocial and emotional functioning. However, he obtained psychological help and psychiatric help and was able to return to work in approximately September 2001, and to function there for a period of time..."

[independent psychologist] concluded that the Appellant's psychiatric condition was in remission for a period of time prior to January 2002 and also concluded that the major factor impacting on his mental and emotional stated did change in the time period leading up to the 2002 hospital admission:

> "Therefore, and in summary, [the Appellant`s] depression was initially related to factors arising from his motor vehicle accident and also perhaps from factors that led to his return to work in a situation that he was not himself supportive of. As time progressed, it seems from the medical documentation available, that other psychosocial variables contributed more significantly to his major depression than did his mva... "

[independent psychologist] concluded that the depressive episode of 2001 was not directly related to the motor vehicle accidents. However, he indicated that the fact he had had prior episodes contributed to his vulnerability for future episodes. He indicated:

> "I would note, in this regard, that a Major Depressive Episode is a significant risk factor for the future development of Major Depressive Episodes. Specifically, a person with one major depressive episode has a 50% chance of a relapse. A person with two depressive episodes has a 75% of relapse, and a person with three depressive episodes has a 90% chance of a relapse into a future episode of major depression. [The Appellant] seems to have had two separate episodes of major depression over the time course of his troubles with sequelae arising from his motor vehicle accidents. These depressive episodes appear to have been in 1996, when he was initially assessed by psychology and treated with antidepressant medications, as well as following the accidents of December 1999 and January 2000, when he was again actively seen and treated with antidepressant medications. Therefore, the effect of previously-experienced Major Depressive Episodes cannot be totally separated from future episodes that occur. In summary, therefore, it is impossible to state whether [the Appellant] would have experienced this major depressive episode of 2002 had he not experienced the previous episode noted above. "

In the panel`s view, the major depressive episode which the Appellant suffered in January 2002 cannot be separated from the mental health history which was documented by his physicians, psychiatrists and psychologists, and other health care providers such as physiotherapists, occupational therapists and [Appellant's doctor #3]. All of these professionals refer, throughout the Appellant`s medical records, to continuous psychological issues of anxiety and depression which began after the first motor vehicle accident in 1996 and continued to 1998, escalating again to major depression and alcoholism after the subsequent accidents in 1999 and 2000, through the years 2000 and 2001 and culminating in hospitalization in January 2002. In the panel`s view, the medical evidence establishes that the episodes of depression which were caused by the motor vehicle accidents were significant risk factors for and contributors to the

development of the Appellant`s major depressive episode in 2002 and that this episode cannot be separated from the Appellant`s prior psychiatric and psychological history. These psychiatric conditions led to the loss of his employment in 2002 and inability to work in the period which followed.

Accordingly, the panel finds that the Appellant`s inability to work between January 2002 and May 2005 was a result of psychological injuries due to the motor vehicle accident. The Internal Review decision dated April 27, 2007 should be overturned as a result. The Appellant`s appeal is allowed and the panel finds that he shall be entitled to IRI benefits from January 2002 to May 2005.

The Internal Review decision regarding further treatment benefits for his low back and right knee dated February 9, 2010 is upheld and the Appellant's appeal from that decision dismissed.

Dated at Winnipeg this 20th day of June, 2013.

LAURA DIAMOND

JACQUELINE FREEDMAN

JANET FROHLICH