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Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File Nos.: AC-10-153**

PANEL: Ms Laura Diamond, Chairperson
Ms Pat Heuchert
Dr. Chandulal Shah

APPEARANCES: The Appellant, [text deleted], was not present at the hearing;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Matthew Maslanka.

HEARING DATE: October 7, 2014

ISSUE(S):

- 1. Entitlement to Personal Injury Protection Plan benefits.**
- 2. Whether the Appellant's Income Replacement Indemnity benefits were correctly calculated.**
- 3. Entitlement to further Income Replacement Indemnity benefits.**

RELEVANT SECTIONS: Sections 70(1), 71(1) and 110(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 8 of Manitoba Regulation 37/94.

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 July 15, 2004. As a result of the motor vehicle accident she reported soft tissue injuries to her neck, back, left rib cage, shoulders and foot.

Prior to the motor vehicle accident, the Appellant was employed as an [text deleted] and was also self-employed as a [text deleted]. Prior to the accident, she suffered from right hip and left

shoulder problems, irritable bowel syndrome and multi-level degenerative disc disease in the mid-thoracic region.

Following the accident, the Appellant continued to work as [text deleted] until August 30, 2004. She then received full Income Replacement Indemnity (“IRI”) benefits for her inability to work at her [text deleted] position from September 1, 2004 to November 1, 2004. She began a graduated return to work program on November 1, 2004 and received top-up wages, while working on a graduated basis, from November 2, 2004 to December 26, 2004, when her IRI benefits ended. The Appellant maintained her work status until February 9, 2006, when she was no longer employed as [text deleted].

The Appellant presented a claim to MPIC which took the position that her IRI benefits and interest were not correctly calculated with respect to her self-employment from September 1, 2004 to December 26, 2004. She also claimed entitlement to further IRI benefits beyond December 26, 2004. Finally, the Appellant sought Personal Injury Protection Plan (“PIPP”) benefits with respect to recurrent headaches, knee pain, left foot and ankle pain, psoriasis, fibromyalgia and depression.

The Appellant’s case manager declined to allow any of these benefits sought and the Appellant sought an Internal Review of these decisions.

On September 2, 2010, an Internal Review Officer for MPIC reviewed the Appellant’s file. She concluded that a cause and effect relationship between the motor vehicle accident and diagnoses of headaches, knee pain, left foot and ankle pain, psoriasis, fibromyalgia and depression and the motor vehicle accident could not be established.

The Internal Review Officer determined that the medical evidence did not establish that the Appellant was incapable of performing her self-employed duties in direct relation to the motor vehicle accident, and that the Appellant was not entitled to further IRI benefits on this basis. Her past IRI benefits and interest were found to have been correctly calculated.

Further, the Internal Review Officer found that the medical evidence did not show that the Appellant had an inability to perform the duties of her employment due to motor vehicle related accident related conditions after December 26, 2004.

The Appellant has now appealed that Internal Review Decision to this Commission. The issues which require determination on this appeal are:

- a) Whether the Appellant is entitled to PIPP benefits with respect to her recurrent headaches, knee pain, left foot and ankle pain, psoriasis, fibromyalgia or depression.
- b) Whether the Appellant's IRI benefits and interest were correctly calculated with respect to her self-employment from September 1, 2004 to December 26, 2004.
- c) Whether the Appellant is entitled to IRI benefits beyond December 26, 2004.

Preliminary and Procedural Background:

The Appellant did not attend at the hearing into her appeal. Having regard to the number of adjournments which were requested by the Appellant and allowed by the Commission in the past for this appeal, the panel has set out the history of proceedings that led up to the hearing in this case, when the Appellant did not appear or participate. The reason for setting out this history in such detail is so that the Appellant may understand the context in which this decision was reached, amidst a background of her failure to pursue her appeal in a reasonable fashion.

The Appellant's counsel filed a Notice of Appeal on her behalf on October 26, 2010. A draft index of documents relevant to the appeal was provided to counsel. However, counsel withdrew representation on December 11, 2013.

A preliminary Case Conference Hearing was scheduled for January 27, 2014 to determine how the Appellant wished to proceed with her appeal and whether there was further written evidence she wished to submit. On January 17, 2014 the Appellant contacted the Commission to request a change to the date set for the preliminary Case Conference Hearing. The Appellant was advised that it is the Commission's practice to require that requests for adjournments be received in writing, together with the reasons for the request. The Appellant sent a facsimile to the Commission setting out her request. However, the Commission wrote to the Appellant on January 21, 2014, advising that the request for adjournment had not been granted. The preliminary Case Conference Hearing was held on January 27, 2014, with the Appellant participating via teleconference. A hearing date of May 7, 2014 was set for the hearing of the Appellant's appeal. The Appellant was requested to provide the Commission with a list of witnesses she intended to call at the hearing no later than February 28, 2014. MPIC was to advise as to its witnesses by March 31, 2014. The Appellant was also to obtain a copy of her indexed file from her previous counsel, and if she was unable to do so, she was to contact the Commission to make alternate arrangements for same.

On February 14, 2014 the Appellant sent a request for an adjournment of the hearing date of May 7, 2014 to the Commission, but did not provide her reasons for her request. On February 18, 2014 she was advised that her request for the adjournment would only be considered when she provided reasons for the request.

No response was received from the Appellant and an Appeals Officer for the Commission wrote to the Appellant on March 3, 2014 requesting that she contact the Commission to advise whether she had obtained her indexed file from her previous counsel, or required assistance in that regard.

When the Appellant did not reply, the Commission sent an additional copy of the Appellant's indexed file to her on March 11, 2014, via Canada Post Xpresspost with signature required. Canada Post confirmed the package was delivered on March 13, 2014.

A further preliminary Case Conference Hearing was set for April 3, 2014 to discuss whether the Appellant would be calling any witnesses at the hearing, and if so, to provide their names and witness summaries.

On March 26, 2014, the Commission received a facsimile from the Appellant which appeared to request an adjournment of the preliminary Case Conference Hearing scheduled for April 3, 2014 so that she could obtain representation from the Claimant Adviser Office. On March 31, 2014, the Commission wrote to the parties granting the Appellant's request for an adjournment. In this letter, the parties were advised that the Commission would hold a preliminary Case Conference Hearing on May 7, 2014 at 9:30 a.m. in order to discuss the status of the Appellant's representation. A Notice of the Case Conference Hearing of May 7, 2014 accompanied the letter.

On May 7, 2014 at 9:12 a.m., the Commission received a facsimile from the Appellant's MLA advising that he had just met with the Appellant and wished to intervene in the process. The panel proceeded with the Case Conference hearing and the MLA participated via teleconference. He was provided with a brief history of the matter and the possibility of the Appellant retaining

representation from the Claimant Adviser Office was discussed. The Commission agreed to hold the Appellant's file in abeyance until June 2014 to allow the Appellant and her MLA to conduct research into the possibility of obtaining such representation. A copy of the brochure of the Claimant Adviser Office and contact information for that office were provided to the MLA and the Appellant by mail. The Commission also advised that if it was not contacted by June 2014, a further Case Conference Hearing would be scheduled.

When the Commission was not contacted by the MLA, the Appellant, or the Claimant Adviser Office, the Commission wrote to the parties on June 11, 2014 advising that a further Case Conference Hearing would be scheduled to discuss representation of the Appellant. The Commission wrote to the Appellant again on June 24, 2014 advising that the Commission would be scheduling another preliminary Case Conference Hearing to discuss the matter. The Appellant was advised that she could attend by teleconference if she wished. The letter of June 24, 2014 sent by Canada Post Xpresspost was returned to the Commission on July 4, 2014, but the copy of that letter sent by regular mail was not returned to the Commission.

On July 2, 2014 a Notice of Case Conference Hearing scheduled for August 13, 2014 was sent to the Appellant by Xpresspost and regular mail. The letter of July 2, 2014 sent by Xpresspost was refused by the Appellant on July 4, 2014. The copy of the letter dated July 2, 2014 which was sent by regular mail was not returned to the Commission.

On August 12, 2014 the Director of Appeals was contacted by the Appellant's previous counsel to advise that the Appellant did not wish to proceed with her appeal and wanted to withdraw. He was advised that should the Appellant wish to request an adjournment of the Case Conference Hearing scheduled for August 13, 2014, the Commission would require the request and reasons

for it in writing and her request would be provided to a Commissioner for consideration. Counsel was also faxed a copy of a Notice of Withdrawal form and was advised that if the Commission received a signed copy of the Notice of Withdrawal that day, the preliminary Case Conference hearing scheduled for August 13, 2014 would not proceed and the Appellant's attendance would not be required.

The Commission did not receive a written request for adjournment or a signed copy of the Notice of Withdrawal form and as a result, the preliminary Case Conference Hearing proceeded on August 13, 2014. Counsel for MPIC was present. The Appellant did not appear for the Case Conference Hearing and did not contact the Commission to participate via telephone conference. As a result, the Commission proceeded to set the matter down for a hearing on October 7, 2014 at 9:30 a.m.

The Commission wrote to the Appellant on August 21, 2014 advising that her appeal had been set down for hearing on October 7, 2014 at 9:30 a.m. A Notice of Hearing was enclosed. The Appellant was advised that this date was for the final hearing of the appeal. The Commission also advised that as it understood the Appellant may have some interest in withdrawing her appeal, a Notice of Withdrawal form was also enclosed, for her convenience. The letter and Notice of Hearing were sent to both parties. The letter and Notice of hearing dated August 21, 2014 were sent to the Appellant by Canada Post Xpresspost and was accepted by the Appellant on August 27, 2014.

The Commission's Notice of Hearing provided that the time and date of the hearing are firm; postponements will only be granted under extraordinary circumstances.

On October 3, 2014, the Commission received a letter from the Appellant requesting an adjournment of the hearing scheduled for October 7, 2014 in order to submit additional medical information from her family doctor. The Commission wrote to the Appellant on October 6, 2014, advising that, due to the history of the file and the numerous requests for adjournment with respect to the matter, an adjournment of the hearing set for October 7, 2014 would not be granted. The Appellant was advised that should her family doctor wish to submit a request directly to the Commission indicating the Commission should not proceed or that she wishes to provide additional medical information, the Commission would require that information before October 7, 2014.

On October 7, 2014, the hearing of the Appellant's appeal was convened at 9:30 a.m. Counsel for MPIC was present at the hearing. The Appellant did not appear at the hearing. The appeal hearing proceeded and the Commission received submissions from counsel for MPIC regarding the appeal. Thereafter, the panel deliberated and reached a decision regarding the Appellant's appeal.

Evidence and Submission for the Appellant:

The Appellant, through her previous counsel, filed a Notice of Appeal dated October 26, 2010.

The Notice of Appeal stated:

“The review officer failed to accept the medical evidence available to support [the Appellant's] claim, and such other evidence that may be led at a hearing.”

The Appellant's indexed file contained a number of medical reports dealing with the issues before the panel on this appeal. A number of the medical documents concerned an unrelated ocular condition which was not the subject of this appeal before the panel. Reports were also provided by [Appellant's Doctor] (family physician); [Appellant's Psychiatrist #1] (psychiatrist);

[Appellant's Psychologist] (clinical psychologist); [Appellant's Physiatrist #2] (physiatrist); and [Appellant's Psychiatrist] (psychiatrist).

[Appellant's Doctor] provided several reports, including reports dated October 15, 2007, April 4, 2007, February 7, 2007, April 25, 2006 (sickness certificate), December 1, 2004, September 12, 2007 and August 8, 2007. She described injuries sustained by the Appellant in the motor vehicle accident including neck pain and a strain to the muscles in her back. She noted that [Appellant's Physiatrist #1] had confirmed a diagnosis of myofascial pain in close relationship to the car accident in July 2004. She opined that the Appellant's condition of general myalgia and fibromyalgia symptoms were complicated and overlapping with post-traumatic chronic pain and myofascial pain syndrome, related to her car accident on July 15, 2004. She also described the Appellant's unrelated difficulties with carpal tunnel syndrome and her vision. Her conclusion was that the Appellant's overall function and ability to deal with her medical conditions and every day functions was limited.

[Appellant's Physiatrist #2's] reports were supportive of the Appellant's position that since the motor vehicle accident she suffered a significant decline in her physical and emotional health and has not been able to seek or maintain regular employment for which she has experience or training. [Appellant's Physiatrist #2] provided reports dated July 30, 2008, July 29, 2008 and March 28, 2012/May 22, 2012, in support of this position. He explained that the Appellant has continued to experience a number of medical conditions and functional limitations; some that have developed as a result of the motor vehicle collision of July 15, 2004 and some that cannot be directly tied to that motor vehicle collision. He stated:

“[The Appellant's] limitation to work and function independently in her life has been created largely as a result of physical and psychological states that have arisen since the motor vehicle collision of July 15, 2004. It is the writer's opinion that she has been

rendered unable to work competitively in any vocation. She has also lost her independence and the freedom to live her life as she wants.

In the writer's opinion, [the Appellant] has become emotionally and mentally disabled by the ongoing life changes since physical limitations experienced since the motor vehicle collision of July 2004.

Given [the Appellant's] present physical and psychological situation, the writer feels that she is unfit to seek or main regular employment for which she has experience or training..."

[Appellant's Psychologist] also provided several reports. In a report dated January 23, 2007 she stated:

"Until her motor vehicle, [the Appellant] appears to have been a very well functioning individual. She now finds herself physically unable to do many of the activities she used to enjoy... The failed cataract surgery...left [the Appellant] with another disability to cope..."

Diagnostically, [the Appellant] currently has Adjustment Disorder with Mixed Emotional Features but might well develop Major Depression unless there are solutions..."

Two brief reports from [Appellant's Psychologist] were also referred to by counsel for MPIC.

The first is dated July 17, 2007 and states:

"My first meeting with [the Appellant] was on 18th December, 2006, two and a half years after the accident in question. In view of this and my relatively infrequent contacts with her I am not able to comment on her mental state at that time. Her present psychological health is, in my opinion, quite irrelevant to her claim."

The second report is dated August 28, 2007 and states:

"To Whom It May Concern:

[The Appellant] has been seen by me one or two times a month since her first appointment on 18th December, 2006.

Her psychiatric diagnosis is Adjustment Disorder with Mixed Emotional Features. This is a direct result from her car accident and the consequent problems she has experienced in dealing with Auto Pac and [text deleted]. She is unlikely to recover until these issues have been resolved to her satisfaction"

[Appellant's Psychiatrist] provided a report dated November 3, 2008. He indicated:

“As a result of her injuries, her difficulties at work and the complications arising with respect to her financial situation, [the Appellant's] mental health has been significantly impacted. The stresses of work, [text deleted] have had affects (sic) both physically and emotionally... However, as noted in [Appellant's Doctor's] notes, she began to have difficulties with her sleep, her general mood and her abilities to cope. [Appellant's Doctor] certainly considered a diagnosis of depression and referred her to [Appellant's Psychologist]...

In my opinion [the Appellant] is evidencing the consequences of a difficult and protracted physical and emotional circumstance. She is not clinically depressed but certainly is having difficulties adjusting to the chronic changes in her life and lifestyle...”

Evidence and Submissions for MPIC:

Counsel for MPIC began his submission by noting that the Appellant had chosen not to appear at the appeal hearing. As the onus is on the Appellant to establish the merits of her appeal and why the Internal Review decision is incorrect, counsel suggested that an adverse inference should be drawn by her failure to attend and prosecute her appeal. The Appellant has not made herself available either for direct or cross-examination and therefore has essentially not presented her case to the Commission. Therefore, MPIC's view was that, as a result, the Appellant's appeal should be dismissed outright for her failure to prosecute. However, he also went on to address the merits of the appeal.

Counsel reviewed the background of the appeal which stemmed from a motor vehicle accident which occurred in July of 2004, over 10 years ago. The Internal Review decision of September 2, 2010 consolidated the disposition of several case management decisions. Several matters were under review at that time, but since then, several issues have been abandoned and are not currently for the Commission, leaving to be determined the remaining issues identified by the Commission. Counsel submitted that with a thorough review of the facts and history in the

Appellant's case, the Internal Review Officer had provided a rationale for each of her findings and support for all the conclusions which she reached.

MPIC relied heavily upon reports provided by [Independent Physiatrist], a physiatrist who provided an independent third party medical examination report regarding the Appellant dated October 10, 2007. [Independent Physiatrist] reviewed the Appellant's history and prior reports on her medical file, including notes from her family physicians. He also reviewed documents from a previous Workers Compensation claim in which the Appellant was involved and reports from MPIC's Healthcare Services team, which included [MPIC's Doctor's] Health Care Services summaries of the Appellant's pre-motor vehicle accident medical condition and current complaints.

[Independent Physiatrist] indicated that the Appellant's pain arising out of her motor vehicle accident was improving by October 20, 2004, and by November 22, 2004 she began a graduated return to work program. Her IRI benefits ceased on December 26, 2004 and she remained at work for the entire year of 2005 and most of 2006, until November 9, 2006.

It was his conclusion (and [MPIC's Doctor's] conclusion) that the Appellant did not leave work due to motor vehicle accident injuries, but rather due to other causes. The motor vehicle accident likely aggravated an already symptomatic condition and played a contributing role in ongoing neck symptoms. However, other physical complaints which the Appellant had, including headaches, knee pain and problems with her eyes were not reported until long after the motor vehicle accident and were not causally related to the accident. Nor were the foot and ankle pain reported in October 2006 or the Appellant's psoriasis related to the motor vehicle accident. He concluded that:

“There is also no apparent MVA-related rationale as to why the claimant would not be able to progress to return to her prior work duties without the requirement for any restrictions related to the MVA in question. Any difficulties with employment (e.g. potentially the visual complaints or Carpal Tunnel related complaints or joint degenerative complaints) would be unrelated to the MVA in question.”

[Independent Psychiatrist] provided a follow-up report dated August 8, 2013, following a review of documentation from [Appellant’s Doctor], [Appellant’s Psychologist], [Appellant’s Psychiatrist #2], [Appellant’s Psychiatrist] and others.

“I would note that the medical documents do include several letters of advocacy, including from the client’s attending practitioner, and from a physical medicine and rehabilitation consultant. The remainder of the reports were consultation narratives and follow up reports. I would also note that there appeared to be some discrepancies in the recorded pre MVA medical history as recorded in a few of the provided medical reports.

In summary as requested the more recent available medical information was reviewed. Integrating this more recent medial (sic) information review, however, would not materially alter my previously held opinions in this matter. I would note that I previously (that is in 2007) performed a thorough review of the provided available medical file at that time, and performed a physical examination of the client, and produced a report that contained my opinions and response to posed questions.

Of note, significant time has transpired since the motor vehicle accident in question. Specifically, we are now at the point of just beyond 9 years remote from the MVA in question of July 15th, 2004, and are also now 6 years remote from the point of my prior file review, interview, examination and report produced, including opinions provided and questions answered that was performed of the client [the Appellant].”

Counsel for MPIC also reviewed the psychological and psychiatric evidence on the Appellant’s file. He relied on a report by MPIC’s psychological consultant dated September 13, 2007. The consultant reviewed the reports of [MPIC’s Doctor] and reports from the Appellant’s psychologist, [text deleted]. These included what appeared to be two conflicting reports from [Appellant’s Psychologist] dated July 17, 2007 and August 28, 2007. He noted that:

“It appears that [Appellant’s Psychologist] has altered her opinion from approximately one month earlier where she indicated that the claimant’s mental health problems are not in any way related to the MVA. She now comments that the claimant has an Adjustment Disorder that does have a relationship to her dealings with both MPI and [text deleted].”

The consultant stated:

“Based on the review of the file documentation, it is the writer’s opinion that the claimant’s diagnosis of Adjustment Disorder would, on the balance of probabilities, not be directly related to her MVA of July 2004. As indicated above by [MPIC’s Doctor], there was no mention of depressive symptoms by [Appellant’s Doctor] until over 2 years after the MVA in question. This would make the causal relationship possible at best. [MPIC’s Doctor] felt there was no probable causal relationship between the claimant’s depressive symptoms and the MVA.

[Appellant’s Psychologist], in her initial report of July 17, 2007 indicated that she had not started seeing the claimant until 2 ½ years after the MVA in question. She stated that “In view of this and my relatively infrequent contacts with her I am not able to comment on her mental state at that time. Her present psychological health is, in my opinion, quite irrelevant to her claim”. [Appellant’s Psychologist] subsequently changed her opinion in her August, 2007 letter stating that the claimant had an Adjustment Disorder with mixed Emotional Features and that this was directly related to the MVA and the claimant’s dealings with MPI and [text deleted].

Based on the review of the medical documentation, the writer would concur with [Appellant’s Psychologist’s] initial statement that she is not able to comment on the claimant’s mental state 2½ years prior to her having seen her. Furthermore, while the writer would agree that the claimant may have an Adjustment Disorder, there is only a possible causal relationship between this diagnosis and the MVA in question.”

Counsel reviewed [Appellant’s Psychiatrist’s] report of November 3, 2008, pointing out that there were also some inconsistencies in that report. [Appellant’s Psychiatrist] does note that [Appellant’s Psychologist] had made a diagnosis of an Adjustment Disorder with depression and that the Appellant continued to see [Appellant’s Psychologist] for four to five months, “but the relationship terminated when [Appellant’s Psychologist], apparently was unprepared to support her disability claim on the basis of the motor vehicle accident”. Counsel submitted that it would be difficult to rely upon [Appellant’s Psychologist’s] reports, in view of such inconsistencies.

He also noted that the Appellant herself had been an unreliable historian in describing her pre-existing medical conditions. This, he submitted, affected the weight which could be accorded to [Appellant’s Psychiatrist #2’s] reports. His conclusions were based upon the patient’s reporting to him relating to her physical condition. The Appellant was not present at the hearing to face

cross-examination or challenge regarding what she may have told [Appellant's Psychiatrist #2]. Counsel submitted that [Appellant's Psychiatrist #2] did not provide an opinion regarding causal connection based on the medical information in front of him, as he had not integrated that into his reports. Rather, it was submitted, he relied upon the Appellant's subjective complaints and failed to explain how and to what degree the Appellant's motor vehicle accident related physical limitations could preclude her from performing the sedentary tasks of her employment.

Counsel noted that no evidence had been submitted to contradict the IRI calculations prepared by MPIC which were upheld by the Internal Review Officer. Accordingly, he submitted that this ground of the appeal should be dismissed.

Counsel submitted that the evidence established that after the motor vehicle accident the Appellant was able to perform reasonably well at her job for over a year. The reasons she left work had nothing to do with the motor vehicle accident, but rather, were related to other health issues, such as cataracts, etc. which plagued the Appellant during that time. While she faced a variety of issues, and MPIC was not without sympathy for the Appellant, the fact remained that her ongoing problems were not related to the motor vehicle accident and were not something for which MPIC could be responsible for indemnifying her.

Therefore, counsel submitted that the Appellant had failed to meet the onus upon her of showing that the decision of the Internal Review Officer should not be upheld. Accordingly, the Appellant's appeal should be dismissed and the decision of the Internal Review Officer dated September 2, 2010 upheld.

Discussion:

The MPIC Act provides:

Definitions

70(1) In this Part,

"**victim**" means a person who suffers bodily injury in an accident.

Application of Part 2

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

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;

Manitoba Regulation 37/94 provides:

Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

The onus is on the Appellant to show, on a balance of probabilities, that she is entitled to further PIPP benefits, a recalculation of IRI (self-employment) benefits and IRI benefits beyond December 26, 2004.

Although the Appellant did not appear at the hearing to provide testimony or submissions, the panel has reviewed the documentary evidence on the Appellant's Indexed file, including the medical reports provided by [Appellant's Doctor], [Appellant's Physiatrist #1], [Appellant's Psychologist], [Appellant's Physiatrist #2] and [Appellant's Psychiatrist].

However, the panel agrees with counsel for MPIC that the Appellant has failed to meet the onus upon her of showing, on a balance of probabilities, that the Internal Review decision of September 2, 2010 was in error.

The Appellant failed to provide sufficient evidence to meet the onus upon her to show that her ongoing symptoms of headaches, knee pain, left foot and ankle pain, psoriasis, fibromyalgia or depression were caused by the motor vehicle accident. The Appellant suffered from a number of pre-existing conditions prior to the motor vehicle accident and also from several unrelated medical conditions which arose post motor vehicle accident. However, the Appellant has failed to show, on a balance of probabilities, that any of the symptoms connected with these conditions were a result of the motor vehicle accident. Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer in regard to these conditions is upheld.

In her decision of September 2, 2010, the Internal Review Officer set out the sections of the MPIC Act and Regulations applicable to the Appellant's IRI from self-employment. She reviewed the calculation and reconciliation of the Appellant's benefits on IRI plus interest and found that it was correctly arrived at. The Appellant has failed to submit any evidence or arguments to contradict the conclusions of the Internal Review Officer. Accordingly, her appeal for additional IRI benefits from self-employment is dismissed and the Internal Review Officer's decision upheld in this regard.

The panel also agrees with counsel for MPIC that the Appellant has failed to show, on a balance of probabilities, that she was, as a result of the motor vehicle accident injuries, incapable of performing her sedentary employment duties and the tasks associated with her self-employment, after December 26, 2004. The evidence was clear that the Appellant had continued to work at

her job as an [text deleted] between December 26, 2004 and February 9, 2006. Although [Appellant's Psychologist] did opine (in a report dated August 28, 2007) that the Appellant suffered from a psychiatric diagnosis of adjustment disorder with mixed emotional features, resulting from her car accident and the consequent problem she had experienced in dealing with MPIC and [text deleted], this conflicted with a previous report dated July 17, 2007. The July report explained that the doctor had not met with the Appellant until 2½ years after the accident in question and, due to this and her relatively infrequent contacts with her, she was not able to comment on her medical state. She added that the Appellant's present psychological health was, in her opinion, quite irrelevant to her claim.

The panel therefore must conclude that the evidence from [Appellant's Psychologist] fails to meet the onus upon the Appellant to show that she suffered from psychological issues arising out of the motor vehicle accident, which prevented her from working after December 24, 2006.

Although [Appellant's Psychiatrist #2] provided reports which supported the Appellant's claims, the panel agrees with counsel for MPIC that the evidence showed that the Appellant had been an unreliable historian in the past and that [Appellant's Psychiatrist #2's] conclusions appeared to have been based upon the Appellant's reporting to him regarding her physical condition. As neither [Appellant's Psychiatrist #2] nor the Appellant provided testimony at the hearing, we were unable to test or assess the information provided. These reports failed to meet the onus upon the Appellant to explain how and to what degree her motor vehicle accident related physical limitations precluded her from performing the sedentary tasks of her employment.

Accordingly, the panel finds that the Appellant has failed to meet the onus upon her, on a balance of probabilities, of establishing that she was entitled to further IRI benefits beyond December 26, 2004.

Therefore, the Internal Review decision of September 2, 2010 is upheld and the Appellant's appeal is dismissed.

Dated at Winnipeg this 13th day of November, 2014.

LAURA DIAMOND

PAT HEUCHERT

DR. CHANDULAL SHAH