Manitoba

# Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]**
**AICAC File No.: AC-12-102**

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| **PANEL:** | **Ms Laura Diamond, Chairperson**<br>**Ms Jacqueline Freedman**<br>**Ms Irene Giesbrecht** |
| APPEARANCES: | **The Appellant, [the Appellant], was represented by Mr. Ken Kalturnyk of the Claimant Adviser Office;**<br>**Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.** |
| **HEARING DATE:** | **September 23 and September 24, 2014** |
| **ISSUE(S):** | **1. Whether the Appellant sustained a relapse of her initial injury that would render her entirely or substantially unable to perform the duties of her determined employment.**<br>**2. Whether the Appellant is entitled to further physiotherapy treatments.** |
| **RELEVANT SECTIONS:** | **Section 117(1) and 136(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act'), Section 5 of Manitoba Regulation 40/94, and Section 8 of Manitoba Regulation 37/94.** |

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

## Reasons For Decision

The Appellant was injured in a motor vehicle accident on June 10, 2005. Her injuries included multiple soft tissue injuries of the neck and spine including whiplash injury, lower back strain and left shoulder strain. At the time of the accident the Appellant was employed on a full-time basis with the [text deleted] as a manager with a [text deleted].

Following the motor vehicle accident, the Appellant was absent from her employment due to accident related injuries from June 8, 2005 to November 28, 2005 when she began a gradual work re-entry program. She has received various forms of treatment including physiotherapy, medical treatment from her family doctor, a neurologist, and pain specialist and psychological treatment for depression and post-traumatic stress disorder.

On June 9, 2008 a residual capacity determination determined the Appellant into the classification of "Manager in Health Care" in a reduced capacity of 50% of full-time employment. Following the one year job search period, effective June 9, 2009, the Appellant's entitlement to Income Replacement Indemnity ("IRI") benefits was reduced.

The Appellant, while working at 50%, reported that she continued to struggle with chronic pain, psychological difficulties and heavy workloads. In July of 2009, an event occurred at work that she found highly upsetting. The Appellant did not return to work after July 2009 and she sought additional IRI benefits from that time.

The Appellant's case manager wrote to her on May 25, 2010, explaining that, in MPIC's view, she did not sustain a relapse of her initial injury in July of 2009 that would qualify her for IRI benefits. The case manager explained that the medical information on the Appellant's file confirmed that in July of 2009 a work related incident led to the Appellant's current deterioration and this could not be considered related to her motor vehicle accident. Therefore, the Appellant had not established that she sustained a relapse of the initial injury in July of 2009 that would render her entirely or substantially unable to hold her determined employment as a result of the motor vehicle accident and entitle her to further IRI benefits.

The Appellant was also injured in a subsequent motor vehicle accident, and received physiotherapy treatment benefits for those injuries.

The Appellant's physiotherapist sought funding from MPIC for additional physiotherapy treatments under a higher category of care. However, on July 21, 2010, the Appellant's case manager wrote to her indicating that based on the available medical information she qualified only for Category 1 (Primary Care Treatment) which provided up to 24 physiotherapy visits. The case manager indicated that the Appellant did not qualify for physiotherapy under Category 3 (Complex Treatment). Despite prior diagnoses in her past medical history (including myofascial syndrome, fibromyalgia, TMJ dysfunction, chronic cervical strain and degenerative change to the cervical spine), MPIC's Health Care Services team had concluded that these pre-existing conditions did not qualify the Appellant for complex physiotherapy treatment. Entitlement to further MPIC funded physiotherapy treatment was denied.

On April 3, 2012, an Internal Review Officer for MPIC reviewed the Appellant's file to consider whether she had sustained a relapse of her initial injury in July of 2009 that would entitle her to receive further IRI benefits. The Internal Review Officer also reviewed the question of whether, based on the medical information on the Appellant's file, further physiotherapy treatment was medically required.

In considering whether the Appellant had suffered a relapse in July of 2009, the Internal Review Officer reviewed the Appellant's medical file, which included reports from her family physician, specialists and psychologist, as well as MPIC's psychological consultant. The Internal Review Officer concluded that the Appellant's psychological difficulties after July 2009 were the result of a work related incident that was not related to the motor vehicle accident.

In regard to the additional physiotherapy treatments sought by the Appellant, the Internal Review Officer reviewed the Appellant's medical file and considered reports from the Appellant's physiotherapist and MPIC's Health Care Services physiotherapy consultant. It was concluded that further (Category 3) physiotherapy treatment was not medically required.

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

At the hearing the parties confirmed for the panel that other issues which had previously arisen between the parties (including reimbursement for an Acu-Stem unit, calculation of IRI benefits, physiotherapy treatment in 2005 and 2006, and supportive physiotherapy treatment) were no longer before the panel on appeal.

**Evidence for the Appellant:**

The Appellant testified at the hearing into her appeal. She described the motor vehicle accident and the injuries which resulted. She also described her job as the administrative director of a [text deleted]. She supervised many employees and had a wide variety of duties with high level responsibilities. She loved her job and described it as stressful, but manageable. Before the motor vehicle accident she thrived on having multiple things to work on and although she sometimes experienced challenges in dealing with various vendors or supervisors, she had always managed to deal with these challenges in a professional manner. The Appellant worked for six years in a stressful environment without suffering emotional breakdown. She had never found it necessary to seek psychological or psychiatric treatment. Rather, she worked long hours and derived a great deal of satisfaction from a job she loved.

The Appellant described her return to work following the motor vehicle accident. Her pain and physical limitations, as well as some psychological struggles with chronic pain, depression and post-traumatic stress, only allowed her to work up to 60% of the time. There was no one to perform the remainder of her duties and she found it difficult to keep up with the workload, often taking work home. The difficulties she encountered in trying to keep "all the balls in the air", and meet her workload demands, while trying to manage her pain and psychological difficulties, led to further stress. A plan was put in place to deal with this by transitioning her to another job. However, in the meantime, the added duty of trying to train her replacement while working in the new area, without additional staff to assist, made the work even more difficult. She was exceedingly anxious, and taking narcotics to manage her pain. This made it difficult for her to cope. In June of 2009 she even had a breakdown in a meeting at work, becoming tearful and emotional. This had never happened before during her tenure with her employer.

Then, an additional incident occurred in July of 2009 when she became very upset during a teleconference call. During the call the Appellant was in conflict with one of her project vendors and her supervisor failed to support her. She did not describe the event as a major incident, and testified that it was not very different from conflicts she had managed in the workplace in the past. However her reaction to it, because of her weakened physical and emotional state, was extreme. She explained that she was so fragile and so overwhelmed that this became the straw that "broke the camel's back".

Prior to the motor vehicle accident she would have taken such an incident in stride, discussing it with her supervisor and resolving it, as she had in the past. However, in 2009, while still coping with the after-effects of the motor vehicle accident and still emotionally fragile, she found herself in a severe depression.

That incident in July led to a migraine, and she had to go to bed. She did not return to work after that. She continued treatment with her psychologist, who provided reports indicating that the workplace incident was not the dominating factor in the Appellant's relapse, as she had already been experiencing considerable difficulty with her psychological functioning following the motor vehicle accident.

The Appellant was in receipt of physiotherapy treatments after the motor vehicle accident in 2005. She also described another motor vehicle accident in January of 2010, where she suffered from a whiplash with some right-sided neck pain and shoulder discomfort. She began to receive additional physiotherapy treatments following this motor vehicle accident.

She paid for some physiotherapy treatments on her own in the years 2008, 2009, 2010, 2011, 2012 and 2014.

The Appellant explained that in physiotherapy she received treatment for TMJ in her jaw, left neck, shoulder and back pain, tingling in areas such as her fingers and some numbness in her face. The therapy helped to deal with mobility issues in her neck, shoulder and trapezius. She received manual manipulation and release as well as dry needling. She explained that physiotherapy treatment releases the trigger points and allows her to function again for the rest of the day. This provides some pain control and periods when she can do a few things without pain. The Appellant explained that when she does not go for therapy she tends to deteriorate.

She suffers from a lot of migraines and has left temporal pains finding it difficult to drive or turn her head. She often has to lie down, due to pain. Unfortunately, she is not able to go to physiotherapy very often, because she can't afford it, and so just goes when she cannot tolerate the pain anymore.

The Appellant's physiotherapist also testified at the hearing, and provided written reports for the Appellant's file. He described the injuries which the Appellant suffered in the motor vehicle accident in 2005 and the treatment he provided for it. He also treated the Appellant following the motor vehicle accident in 2010.

The physiotherapist described the Appellant's injuries from the 2005 motor vehicle accident, which he diagnosed as acute whiplash with shoulder injury and arm symptoms. The Appellant showed signs of radiculopathy and the physiotherapist explained that she also showed degenerative changes which were greater than age normal, with a level of compromise not often seen in someone her age. Although this pre-existed the motor vehicle accident, prior to the motor vehicle accident she had been asymptomatic. Then, the second motor vehicle accident exacerbated this previous condition with an increase in symptoms and similar physical findings. He explained that these injuries would have created postural stresses and made it difficult for her to do her job at a desk and in front of a computer. She would not be capable of sustaining employment which included these postures for any length of time.

He explained that due to the degenerative changes, complications created by the two motor vehicle accidents and the Appellant's difficulties with mental health and stress, she required additional physiotherapy treatment, under Category 3 treatment.

The Appellant also provided several reports from her family physician and from her psychologist, [text deleted].

Both noted the difficulties she experienced following the 2005 motor vehicle accident with chronic pain, depression, post-traumatic stress disorder, overwhelming workload and difficulty managing her pain.

[Appellant's psychologist] diagnosed the Appellant with major depression which was secondary to difficulties managing her workload, stress and pain, as well as grief over her loss of function and role identity.

The psychologist provided a report on June 15, 2009, when the Appellant was transitioning to her new job. She stated:

> "...Although she enjoys her new duties, [the Appellant] continues to find her workload very heavy and reports feeling overwhelmed at times. [The Appellant] also continues to struggle with chronic pain, and finds that her pain often increases over the course of the workday, at times impacting on her ability to concentrate.
>
> During our sessions, [the Appellant] was frequently teary when discussing difficulties managing her workload as well as her ongoing difficulties coping with pain. [The Appellant] has demonstrated particular difficulties coping since February 2009, at which point she began to report a marked drop in motivation and interest in her activities and a tendency to withdraw and avoid social contact...
>
> In summary, [the Appellant] is experiencing depressed mood, loss of interest and motivation, reduced energy and fluctuations in concentration. [The Appellant's] current symptoms support a diagnosis of Major Depression in partial remission. She is likely to benefit from additional psychotherapy aimed at further enhancing her ability to cope with pain and stress associated with her return to work."

On August 10, 2009, [Appellant's psychologist] provided a progress report which reviewed the Appellant's worsening depressive condition from February 2009 and addressed the conference call meeting which occurred in July of 2009. She indicated that the Appellant had found this upsetting and highly traumatic and had not since returned to work. She described the symptoms and the fact that the Appellant had:

> "...once again began to experience nightmares of her motor vehicle accident as well as intrusive daytime recollections of the accident.
>
> In summary, until recently [the Appellant] was making some progress, although still struggling with symptoms of depression, chronic pain and occupational stress. She has suffered a significant setback in recent weeks with a conference call she found highly traumatic. Since that time she has experienced a marked resurgence in symptoms of depression and has also experienced markedly heightened anxiety-based symptoms."

On October 26, 2009 [Appellant's psychologist] reported again, describing the considerable difficulty with psychological functioning which the Appellant was experiencing during the months of June and July 2009, while continuing to struggle with chronic pain. She again reviewed the event which occurred in July, stating that it "precipitated a more marked deterioration in [the Appellant's] condition".

> "In psychotherapy, [the Appellant] has described the conference call which triggered her setback as functioning like the proverbial straw which broke the camel's back, coming as it did at a time when she was already emotionally fragile and depleted due to chronic pain...
>
> In summary, a work-related event occurring in July apparently overloaded [the Appellant's] already strained coping resources, leading to a significant setback..."

[Appellant's psychologist] also reported on January 6, 2010, indicating that the Appellant was not fit to return to work due to symptoms of depression and anxiety as well as chronic pain. She indicated that in her professional opinion, these symptoms stemmed from the Appellant's motor vehicle accident. Although the work related event in July 2009 appeared to precipitate a setback in the Appellant's functioning and mental health difficulties, in [Appellant's psychologist's]

opinion, the Appellant's current symptoms were traceable, directly or indirectly, to her motor vehicle accident.

The panel reviewed several reports from the Appellant's family physician, who also noted the Appellant's symptoms of depression and the deterioration of her overall physical condition. She set out work restrictions which included no lifting, bending, long sitting or desk work for more than a few minutes due to chronic neck pain. She also recognized the emotional stresses on the Appellant, who could not deal with external workplace stressors.

**Submission for the Appellant:**

Counsel for the Appellant carefully reviewed all of this testimony and these reports. He submitted that both the testimony of the Appellant and the reports show that the Appellant had been having difficulties coping since February of 2009. She found her workload very heavy and reported feeling overwhelmed, while struggling with chronic pain, depression and post-traumatic stress. She testified regarding an emotional breakdown in front of her staff members in June, which had never happened before in her career. In his view, this downward spiral continued. She was not doing fine and was not in remission prior to the workplace incident of July 2009, but rather, was still suffering and deteriorating prior to the July 2009 workplace incident.

The Appellant had described the July incident as being relatively minor in nature and something which, prior to the motor vehicle accident, she would have been able to easily resolve with her supervisor. [Appellant's psychologist's] evidence supported the position that the workplace incident was not the predominating factor in the Appellant's relapse but rather just the straw that broke the camel's back after a period when she was already experiencing a worsening psychological condition. Counsel argued that while the motor vehicle accident was not the

immediate triggering cause of the relapse in July 2009, it was the predominating cause that set in motion a chain of events without which a relapse would not have occurred. Given the Appellant's deteriorating physical and psychological state in the months leading up to the July 2009 workplace incident, that incident itself was of little consequence, as it was just a matter of time before a relapse occurred.

Medical evidence also supported the Appellant's inability to work as a health care manager as a result of this relapse. In fact, counsel for the Appellant submitted it was obvious that the determination of the Appellant into a half-time health care manager position was completely inappropriate from a physical perspective alone and that all the warning signs showed that someone suffering from her physical problems, in addition to PTSD and major depression could not return to such a high pressure job. The return was clearly contra-indicated and led to the Appellant's relapse.

Counsel also submitted that the criteria for Category 3 physiotherapy treatments under MPIC's Physiotherapy – Schedule C referred to "significant complication, pre-existing injury or medical conditions". Counsel submitted that the physiotherapy and medical reports on the Appellant's file showed that she suffered from severe left foraminal occlusion at various levels, with the C3-C4 level being "virtually occluded". Her physiotherapist testified that such a degree of occlusion would clearly indicate that the nerve roots at those levels were compromised and, in fact, radicular symptoms were found. Such a condition would qualify as significant or as an arthropathy under complex care. Given the degree of arthritis in her spine and the complications which she had suffered since the accident, counsel submitted that the Appellant had not reached maximum medical improvement and should be reimbursed for all physiotherapy treatments which she personally had paid for between January 26, 2010 and December 2013. The

Appellant's evidence indicated that these treatments had provided her with pain relief and an element of pain control. This allowed her to reduce her pain medication. Therefore, the treatments were beneficial to her overall health and should be supported by MPIC.

**Evidence for MPIC:**

MPIC referred to reports from a neurologist, anesthesiologist, and the Health Care Services psychological and physiotherapy consultants. The physiotherapy consultant, [text deleted], also testified at the hearing into the appeal.

[MPIC's physiotherapy consultant] reviewed the criteria for different categories of physiotherapy treatment as set out in the agreement between the Physiotherapist's Association and MPIC. He explained his understanding of the criteria for Category 3 physiotherapy treatment and how it was developed.

He then reviewed the medical reports on the Appellant's file. He explained that this review did not show any evidence of nerve root damage, weakness or reflex changes in a segment which would lead him to believe the Appellant required a higher category of physiotherapy care. He noted that even if there was a finding of cervical radiculopathy, the appropriate category would still allow for far fewer treatments than the Appellant had already received.

[MPIC's physiotherapy consultant] also indicated that even with a break in treatment, the Appellant had failed to show that she was any worse. In fact, in his view, the Appellant had reached a plateau of improvement and reached maximum medical improvement. While he recognized that the Appellant may experience some relief from the physiotherapy treatments, it

was not of any lasting benefit to her. She neither qualified for a higher category of care, nor did he believe that further physiotherapy treatment was medically required in this case.

**Submission for MPIC:**

In regard to the issue of whether the Appellant had suffered a relapse from her motor vehicle accident injuries in July of 2009, counsel for MPIC submitted that the cause of her current condition was the workplace incident which occurred in July of 2009.

Counsel emphasized that at that point the Appellant had been working for 3½ days per week for a period of three years. Although she complained of heavy workload, depressed mood, loss of interest, motivation and energy, she continued to work throughout this period. She had the functional capacity to perform on a part-time basis.

The evidence contradicted the submission of the Appellant that the workplace incident in July 2009 was relatively minor. The Appellant's own psychologist described it as being highly traumatic and upsetting. It was not a minor event, counsel submitted and indeed, had a significant effect upon the Appellant.

Counsel suggested, both in cross-examination of the Appellant and in her submission, that the Appellant had a great deal invested in the project affected by her disagreement with the vendor. When the vendor wanted to remove her, and her supervisor did not take her side, she was surprised and shocked, and so upset that she had her husband take her home, where she went to bed.

Counsel reviewed the opinions provided by MPIC's psychological consultant. In a report dated May 18, 2010, following a full review of the medical information on the Appellant's file, he concluded that there was no indication of psychological diagnosis that would be considered related to the motor vehicle accident at that time. Although the Appellant had some ongoing pain concerns and a diagnosis of major depression in partial remission, there was no diagnosis of post-traumatic stress disorder at that time, and the Appellant was able to work part-time. In his view, the Appellant's significant deterioration in her mood was related to a workplace incident and would not be considered related to the motor vehicle accident which occurred four years earlier. The motor vehicle accident was not a probable cause of the Appellant's condition.

In spite of [Appellant's psychologist's] opinion that the Appellant's current symptoms were traceable, directly or indirectly, to her motor vehicle accident, the consultant was of the view that the Appellant's emotional deterioration in July 2009 and subsequent need to be off work since that time was only possibly related to the motor vehicle accident which occurred years earlier. She was working part-time until the significant and upsetting workplace incident in late July of 2009 and therefore she did not have a motor vehicle accident related psychological condition that would preclude her from returning to her duties on a part-time basis. His conclusion was that the Appellant's current total work disability appeared, on the balance of probabilities, to be related to the July 2009 workplace incident and not the motor vehicle accident of June 10, 2005.

Therefore, counsel submitted that the Internal Review Officer was correct in finding that the Appellant did not suffer a relapse which would entitle her to IRI benefits and that the Appellant's appeal on these grounds should be dismissed.

In regard to the Appellant's claim for further physiotherapy treatments, counsel referred to evidence provided by the Appellant on cross-examination when she was asked to describe the benefit that she derived from physiotherapy treatments. The Appellant had explained that she felt better for a day or two after the treatment, with more pain control. Counsel submitted that this failed to satisfy the test set out by the legislation for medically required treatment. In examining the period for which physiotherapy treatments were sought between January 2010 and December 2013, counsel submitted that there is no indication that there was a marked or any improvement from the physiotherapy treatment. The treatment did not provide the Appellant with any long term benefit or with a substantial change in her condition. The Appellant did not substantially improve and was not able to go back to work. For a chronic pain condition, this would be an indication of maximum medical improvement, with no real change.

Nor, it was submitted, did the Appellant's pre-existing degenerative changes or the injuries which she suffered in the motor vehicle accident entitle her to complex care in accordance with the Physiotherapy Agreement. This section is intended to cover complex and significant conditions and is not intended to apply to cases such as the Appellant's, where she suffered a whiplash injury. The neurologist, [text deleted], and the pain specialist, [text deleted], clearly did not share the concerns expressed by the Appellant's physiotherapist in his evidence. They did not make specific recommendations for the Appellant to attend physiotherapy treatment and did not express significant concerns in this regard. The specialists outlined treatment plans for myofascial pain which included narcotics prescriptions, but did not specifically recommend physiotherapy treatment.

Counsel for MPIC submitted that the Appellant had reached maximum medical improvement after she completed her Category 1 treatment following her 2010 motor vehicle accident. The

criteria for Category 3 care had not been met, as it was intended to cover a significant condition, similar to the other types of criteria specifically listed within that category. Further, the evidence showed that the Appellant's condition had remained stable, she had reached maximum medical improvement and would not benefit, beyond temporary transient relief, from further physiotherapy.

Therefore, counsel submitted that the Appellant's appeal for further physiotherapy treatment benefits should also be dismissed.

**Discussion:**

The MPIC Act and Regulations provide:

> **Entitlement to I.R.I. after relapse**
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> 117(1) If a victim suffers a relapse of the bodily injury within two years
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> (a) after the end of the last period for which the victim received an income replacement indemnity, other than an income replacement indemnity under section 115 or 116; or
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> (b) if he or she was not entitled to an income replacement indemnity before the relapse, after the day of the accident;
>
> the victim is entitled to an income replacement indemnity from the day of the relapse as though the victim had been entitled to an income replacement indemnity from the day of the accident to the day of the relapse.

Manitoba Regulation 37/94:

> **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.

> **Reimbursement of victim for various expenses**
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> 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:
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> (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

> Manitoba Regulation 40/94:
>
> **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:
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> (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 parties also referred to the "Schedule C Physiotherapy Guidelines – Guidelines for Clinic Treatment – Framework for Clinical Decision Making", and in particular to certain "Physiotherapy Service Categories: [1-4]" in effect at the relevant time, including:

> "**Primary Care Treatment**: This category includes all common musculoskeletal disorders not otherwise specified in this schedule (Grade I and II sprains and strains as well as all spinal disorders). A reasonable framework for this is **18 to 24 visits** as a maximum number of in-clinic treatments. The physiotherapist will provide the best practice in the art and science of musculoskeletal healthcare in an effort to assist the patient to return to work or previous function. **No extensions beyond 24 visits shall be permitted.**
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> **Complex Treatment**: The complex treatment group would include specific diagnostic entities which often require both more time per visit, as well as longer in-clinic programs, some with very lengthy treatments being required.
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> The treatments should still be monitored and care should be considered as medically required. Physiotherapy assessment, outcome measures, screening tests, as well as Functional Capacity Evaluations [pre-approved FCE's] will help to document the need for ongoing in-clinic care.
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> These would be managed on a case-by-case basis with the understanding that significant in-clinic treatment should be expected in many of these cases. Diagnoses representative of complex cases include:

***3.5 – significant complicating pre-existing injury or medical conditions for e.g. stroke and heart disease, arthropathy [e.g. significant RA/OA]"***

The onus is on the Appellant to show, on a balance of probabilities, that the condition which prevented her from working after July 2009 was caused by a condition related to the motor vehicle accident and, that, as she has submitted, she sustained a relapse of the initial injury.

The onus is also on the Appellant to show that additional physiotherapy treatments are medically required as a result of motor vehicle accident injuries.

**Physiotherapy:**

In regard to further physiotherapy treatment it is important to note that the parties indicated to the panel, at the outset of the hearing, that supportive physiotherapy treatments were not before the panel on this appeal. Rather, the current appeal before the Commission concerned regular, ongoing physiotherapy treatment. Therefore, although much of the evidence heard by the panel did support the Appellant's need for supportive physiotherapy treatment, we will refer that question back to the Appellant's case manager for a thorough assessment and determination on that issue.

The panel has not found it necessary to determine whether the guidelines for complex care set out in Schedule C apply to the Appellant. Although there was some evidence supporting the Appellant's position that complicating pre-existing injuries or medical conditions (such as arthropathy) may be present, the evidence also established that the Appellant did not derive lasting benefit or improvement in her condition as a result of the physiotherapy treatment. The continued physiotherapy treatment for which the Appellant sought entitlement and reimbursement provided only a short term, temporary benefit to her. Her evidence was that it

somewhat decreased, or allowed her to cope with her pain for a day or two. The evidence did not show that she derived long term benefit from this care, or that it progressed or improved her condition, leading the Commission to conclude that the Appellant had reached maximum medical improvement from this type of care.

Accordingly, the Commission finds that the Appellant has failed to meet the onus upon her of establishing, on a balance of probabilities, that this type of ongoing care was medically required. As a result, the Commission hereby dismisses the Appellant's claim for complex care physiotherapy benefits, and will refer the question of supportive physiotherapy treatment back to the Appellant's case manager for assessment and determination.

**IRI:**

The panel finds that the Appellant did sustain a relapse of her initial injury as of July 2009 that rendered her entirely or substantially unable to perform the duties of her determined employment. We found the Appellant's description of her workplace experience prior to the motor vehicle accident and the difficulties that she encountered after the accident to be credible. The Appellant worked for many years at a demanding job, in a stressful environment without psychological problems and loved her job. Following the motor vehicle accident the Appellant was not able to return to work full-time, but returned to work on a part-time basis. It appears that her workload was not sufficiently reduced to reflect her reduced working hours. With her heavy workload and difficulties with chronic pain, depression, and some post-traumatic stress, the Appellant began to have problems at work. She tried to compensate by taking work home with her but this lack of rest added to the cycle of pain, depression and stress which she was experiencing.

Plans were put in place for the Appellant to transition to a new position, but this took some time, and in the early portion of 2009 she found herself training the successor to her old position while assuming duties in her new position. She reported to her psychologist that she was feeling overwhelmed and struggling with chronic pain. Her psychologist's reports confirmed that she had demonstrated difficulties in coping since February of 2009, resulting in a diagnosis of major depression. In June of 2009, the Appellant described an emotional breakdown she had in front of her staff members. Then, in July of 2009 she was involved in a stressful workplace incident involving a conference call with a vendor.

[Appellant's psychologist] supported the Appellant's position that the workplace incident was not the predominating factor in the Appellant's relapse. In a report dated October 26, 2009, [Appellant's psychologist] confirmed that over the period between June 15, 2009 and October 26, 2009:

> "...[The Appellant] has experienced considerable difficulty with her psychological functioning. During the months of June and July, 2009, she continued to struggle with chronic pain. [The Appellant] reported that her pain increased over the course of her work-day and at times affected her ability to concentrate while at work. During this period [the Appellant] experienced some worsening of her psychological condition. She reported a loss of motivation and interest in her activities, a tendency to withdraw and avoid social contact, and a generally depressed mood.
>
> An event occurring in late July precipitated a more marked deterioration in [the Appellant]'s condition. [The Appellant] participated via conference call in a meeting involving her workplace and a vendor with whom he had dealt extensively. Events transpired during this meeting which [the Appellant] found highly upsetting. Since this time [the Appellant] has not returned to work. She reports increased pain, accompanied by nausea and vomiting, chronic headaches, feelings of insecurity, reluctance to get out of bed, insomnia, chest tightness, shortness of breath, fatigue and crying spells. She once again began to experience nightmares of her motor vehicle accident as well as intrusive daytime recollections of the accident, and for a time avoided driving (although she has now resumed driving).
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> In psychotherapy, [the Appellant] has described the conference call which triggered her setback as functioning like the proverbial straw which broke the camel's back, coming as it did at a time when she was already emotionally fragile and depleted due to chronic pain."

MPIC's Healthcare Services psychological consultant disagreed with the Appellant's position that the relapse in symptoms was causally connected to the motor vehicle accident. He attributed the Appellant's work disability at that time to be related to the July 2009 workplace incident and not the motor vehicle accident of June 10, 2005. Even when provided the opportunity to review [Appellant's psychologist's] opinions, his opinion was not affected and he continued to opine that the Appellant's current absence from work would only possibly be related to the motor vehicle accident, while the work-related event in July of 2009 was the most probable cause of the Appellant's absence from work.

However, the panel finds that the psychological consultant showed little attempt to investigate or inquire as to the details of this workplace incident and did not provide a thorough analysis of the relative effects of that incident and the motor vehicle accident injuries on the Appellant's condition. As a result, the panel has assigned greater weight to the opinions of the Appellant's family doctor and her psychological caregiver, [Appellant's psychologist].

On July 14, 2011, the family practitioner, [Appellant's doctor], confirmed a diagnosis of injuries sustained in the accident of chronic myofascial pain syndrome with both physical and functional deficits resulting in a "permanent impairment". The doctor did not believe the Appellant would have complete resolution of her symptoms.

[Appellant's psychologist], in a report dated October 28, 2010, specifically commented regarding the causal connection to the Appellant's absence from the workplace having regard to the motor vehicle accident related psychological condition and the workplace incident which occurred in July 2009:

> "In my report of October 26 I noted that a work-related event occurring in late July appeared to have "overloaded [the Appellant's] already strained coping resources", leading to an absence from the workplace. I compared this work-related event to the "straw that broke the camel's back, coming as it did at a time when she was already emotionally fragile and depleted due to chronic pain".
>
> My impression is that [the Appellant's] current absence from the workplace was triggered *proximally* by the work-related event of July 2009; however, I do not believe that the event in of itself is the sole causal factor in her current absence. I feel that this work-related event exacerbated a pre-existing clinical picture of depressive symptoms stemming from her MVA of June 2005. In my opinion, the pre-existing symptoms of depression and chronic pain were distal causal factors (diathesis factors) which rendered [the Appellant] vulnerable to becoming disabled when confronted with additional stressors. I feel that in this sense, her MVA-related psychological condition played an indirect causal role in contributing to her current absence."

The panel agrees with [Appellant's psychologist's] comments as well as the submission of counsel for the Appellant. We find that the motor vehicle accident and the physical and psychological injuries which resulted were the predominating causes of the Appellant's condition. Her absence from the workplace was triggered proximally by the work-related event of July 2009, but she was made vulnerable to becoming disabled by this relatively minor, single event, as a result of the depression, chronic pain and other factors resulting from the motor vehicle accident and her injuries.

Accordingly, the Commission finds that the Appellant sustained a relapse of her initial injury as of July 2009, rendering her entirely or substantially unable to perform the duties of her determined employment. The Internal Review decision dated April 3, 2012 is overturned in this regard and the Appellant's appeal is upheld. Accordingly, the Appellant will be entitled to IRI and other PIPP benefits which may arise for the period following July 2009. The calculation of these benefits will be referred back to the Appellant's case manager for determination along with the assessment and determination of any benefits to which she may be entitled for supportive physiotherapy treatments.

Dated at Winnipeg this 12th day of November, 2014.

**LAURA DIAMOND**

**JACQUELINE FREEDMAN**

**IRENE GIESBRECHT**