Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-13-010

PANEL:	**Ms Laura Diamond, Chairperson** **Ms Mary Lynn Brooks** **Ms Jacqueline Freedman**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.**
HEARING DATE:	**April 8, 2014**
ISSUE(S):	**Whether the Appellant is entitled to funding for further Psychological Treatment Sessions.**
RELEVANT SECTIONS:	**Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5 of Manitoba Regulation 40/94.**

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL 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 October 29, 2002 and sustained the following injuries:

- Closed head injury
- Right occipital condyle fracture
- Facet fractures of C5 and C6 without deformity
- Traverse process fracture of C7 without displacement
- Laceration of spleen and left kidney

- Bracial plexus injury to the left shoulder
- Fracture of the distal left thumb
- Multiple contusions and lacerations

The Appellant also suffered from psychological difficulties following the accident and was in receipt of psychological assistance benefits from MPIC.

On July 16, 2012, the Appellant's case manager wrote to him advising the Appellant that MPIC was unable to provide ongoing psychological treatment for him, beyond some transitional additional sessions approved on May 31, 2012. The case manager indicated that given the information on the file, MPIC was unable to determine a relationship between the motor vehicle accident of October 29, 2002 and his current psychological symptoms.

The Appellant sought an Internal Review of this decision. On October 30, 2012 an Internal Review Officer for MPIC reviewed the Appellant's medical file and numerous psychological and other reports contained therein. Although recognizing that the Appellant was expressing depressive symptoms which appeared to be related to adjustment to his dealings with MPIC over his insurance claim, references to memory and physical impairments preventing the Appellant from successfully pursuing his determined employment had not been supported and thus, the Internal Review Officer did not find a relationship between the motor vehicle accident in question and the Appellant's current psychological and/or cognitive complaints. She concluded by agreeing with the opinion of MPIC's psychological consultant that funding of ongoing psychological treatment would not be considered a medical requirement at that time.

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

Evidence and Submissions for the Appellant:

The Appellant testified at the hearing into his appeal. He described the motor vehicle accident and explained the physical injuries he had suffered. He also described suffering a closed head injury and his subsequent problems with memory, confusion, anger, frustration and depression. He explained that it took some time until he was diagnosed with a severe brain injury.

The Appellant provided descriptions and numerous examples of the mental and psychological difficulties he encountered following the accident. Before the accident, he had been employed as a journeyman electrician with an electrical contractor's license. He was good at this work, and also very handy and able to work on various projects in his spare time.

Following the accident, the Appellant found it difficult to analyze things or concentrate. He couldn't think properly or do calculations. He explained that everything was slow and nothing came quickly. He was fatigued and tired easily. He had always been a constructive, creative person and now found himself frustrated and angry, with a short temper.

The Appellant was treated by [Appellant's Psychiatrist #1], who helped with his depression and in providing him with some coping mechanisms.

Following attempts at return to work programs, MPIC concluded that it was unlikely the Appellant would be able to resume his pre-accident occupation as a licensed electrician, which was classified at a heavy work demand. Based upon a transferable skills analysis and labour

market research, as well as a functional capacity evaluation, MPIC completed a two year determination of the Appellant's residual earning capacity and advised the Appellant that the position of "Construction Inspector" was selected as the most suitable position for his determined employment, effective July 2, 2006.

The Appellant sought an Internal Review of that decision which was rejected by the Internal Review Officer. His application for Review failed to comply with time limits contained in Section 172 of the MPIC Act. That decision was appealed to the Commission which, in its decision AC-09-021 dated February 23, 2012, concluded that the Appellant had not provided a reasonable excuse for failing to file the Application for Review within the time period set out in Section 172(1) of the MPIC Act. Accordingly, the Appellant's appeal was dismissed and the decision of MPIC's Internal Review Officer (dated January 30, 2009) confirming the two year determination as a Construction Inspector was confirmed.

However the Appellant testified that, due to psychological and mental effects of his brain injury, he was still not able to work at the determined occupation, as it was beyond his abilities. He explained his frustration, anger and depression resulting from his accident injuries and their effect on his ability to work and to function. He sought support from a brain injury association and realized that he needed psychological help, which he sought from [Appellant's Psychiatrist #1]. He also described assessments and recommendations which he had received from [Appellant's Neuropsychologist] and other treatment received from [Appellant's Psychiatrist #2], Appellant's Psychiatrist #3] and [Appellant's Psychiatrist #4].

Primarily, the Appellant explained that he found [Appellant's Psychiatrist #1's] treatments helpful. When he went to him to discuss his problems, [Appellant's Psychiatrist #1] would help

him to calm down if he was upset and give him different strategies to try in dealing with his frustrations and challenges.

The Appellant also referred to reports provided from [Appellant's Physiatrist], [Appellant's Neuropsychologist], and [Appellant's Psychiatrist #1], [Appellant's Psychiatrist #2] and [Appellant's Psychiatrist #3].

He submitted that he required further psychological treatment to help him deal with his frame of mind and to turn around and feel better about his life. He had made some progress with [Appellant's Psychiatrist #1] in this regard. He was unable to perform the job of a Construction Inspector and was still suffering from anger, frustration and depression as a result of the deficits arising out of his motor vehicle accident injuries and his inability to work at his chosen profession. He submitted that the Commission should prefer the evidence of his own doctors over that of MPIC's Health Care Services experts. His brain injury is invisible, but does exist, and the Appellant submitted that he required assistance in the form of psychological treatment, to overcome these injuries.

Evidence and Submission for MPIC:

Counsel for MPIC referred to both the neuropsychological assessments performed by [Appellant's Neuropsychologist] and the psychiatric reports provided by the Appellant's caregivers. Counsel for MPIC also relied upon reports from MPIC's psychological consultant to its Health Care Services team.

At the appeal hearing, counsel for MPIC conceded that the medical evidence was clear that the Appellant required further psychological treatment and that this was a medical necessity. However, counsel submitted that this need was not caused by motor vehicle accident injuries.

Counsel noted that following the motor vehicle accident, the Appellant saw both [Appellant's Doctor], and [Appellant's Neuropsychologist]. Both doctors noted his affect and his lack of depressive or anxiety symptoms. Further test results by [Appellant's Neuropsychologist] noted that the Appellant continues to be slow in a particular type of concentration, when asked to focus on two factors simultaneously. He also noted slower hand/eye coordination with a plateaued recovery two years after the motor vehicle accident. No further cognitive difficulties were noted.

Then, two years following the motor vehicle accident, the Appellant began to suffer from depression, which was assessed by [Appellant's Psychiatrist #1]. No reports were filed which noted Post Traumatic Stress Disorder ("PTSD") or other emotional difficulties stemming from the motor vehicle accident.

Rather, counsel submitted that the Appellant's main concern was his financial difficulties as a result of the loss of his IRI payments.

MPIC did, however, provide the Appellant with extensive psychological treatment benefits. It was hoped that this would support him through a graduated return to work or employment seeking activities. Counsel pointed to comments made by [Appellant's Psychiatrist #1], in a report dated May 22, 2008 which commented upon the Appellant's depression following his lack of success in finding employment. This led the psychological consultant for MPIC's Health Care Services team to conclude, on June 4, 2008, that the Appellant's depressive symptoms were

not a direct result of the motor vehicle accident, but rather arose as a result of his inability to find work in his preferred area. However, the consultant still opined that it would be reasonable to support the Appellant for up to a maximum of four sessions with [Appellant's Psychiatrist #1], to assist him with any stress related to an active job search within the area of his determined employment.

Those sessions were used by the Appellant and [Appellant's Psychiatrist #1] reported again on July 15, 2008 outlining sessions discussing issues pertaining to emotional disturbances, sleep difficulties, residual pain and vocational issues. He recommended a further six to eight sessions of counselling. However, a further report by the psychological consultant noted that further psychological treatments were no longer medically required for conditions related to the motor vehicle accident in question, but rather were related to the Appellant's failure to find employment.

A further report from [Appellant's Neuropsychologist] dated February 21, 2012, while acknowledging that it was possible that the Appellant's depressive symptoms were related to the motor vehicle accident, focused on the Appellant's difficulty accepting that he could not return to all of his pre-injury duties. He noted that his level of depression warranted treatment but counsel for MPIC submitted that this was connected with the Appellant's job difficulties, not the motor vehicle accident.

Counsel also referred to a report from [Appellant's Psychiatrist #3] dated March 27, 2012 which diagnosed the Appellant with an adjustment disorder following the motor vehicle accident, recommending cognitive behavioural therapy. The psychological consultant had reviewed reports from [Appellant's Neuropsychologist] and [Appellant's Psychiatrist #3], as well as the

reports from the [Appellant's Physiatrist]. This did not change his opinion that although the Appellant was expressing depressive symptoms, these appeared to be related to adjustment to his feelings with MPIC over his insurance claim:

> "…references to memory impairment and/or physical impairments preventing the claimant from successfully pursuing his determined employment have not been supported by the medical evidence available on file…"

The consultant continued to be of the opinion that continuing psychological treatment benefits were not required as a result of motor vehicle accident injuries.

This resulted in the case manager's decision of July 16, 2012, which was upheld by the Internal Review Officer.

Subsequent further information from [Appellant's Physiatrist], [Appellant's Psychiatrist #2] and [Appellant's Psychiatrist #3], reviewed by the Health Care Services consultant in a report dated April 1, 2014 caused him to maintain his view that there was no causal relationship between the Appellant's current claim and the motor vehicle accident and therefore further psychological treatment was not medically required.

Counsel submitted that treatment was not medically required as a result of motor vehicle accident injuries, but rather was due to the Appellant's choice to not pursue employment as a Construction Inspector, although he was capable of doing so. She reminded the Commission that although the Appellant had attempted to appeal the determination as a Construction Inspector, that decision had been upheld by the Commission in its decision of February 23, 2012. It was the Appellant's choice not to pursue the determined employment that created financial hardship

for him and precipitated his current psychological issues. On that basis, counsel submitted that the Appellant's appeal should be dismissed and the Internal Review decision upheld.

Counsel also submitted, in the alternative, that even if the Commission did determine that the Appellant's continuing psychological issues were the result of the motor vehicle accident, the Appellant had failed to demonstrate that the requested treatment benefitted him. She submitted that the Appellant had already received significant treatment, with many courses of treatment through [Appellant's Psychiatrist #1] and different psychiatrists. However, according to the medical evidence, the Appellant had not been provided with a sustained benefit from this treatment and thus, his appeal should be dismissed on the grounds that the psychological treatment did not provide a demonstrable benefit and therefore is not medically required.

Discussion:

The onus is on the Appellant to show, on a balance of probabilities, that he is entitled to further psychological treatment benefits. The Commission finds that, on a balance of probabilities, the Appellant has established this entitlement.

The MPIC Act provides:

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

Manitoba Regulation 40/94 provides:

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:
(a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;

The primary position of counsel for MPIC was that although medical evidence clearly established recommendations for further psychiatric treatment for the Appellant, this treatment was not made necessary as a result of the motor vehicle accident. [Although the Appellant did suffer a severe brain injury, he was in receipt of IRI benefits for a lengthy period of time and also received a permanent impairment benefit in regard to the brain injury.] Following assessment and treatment with [Appellant's Neuropsychologist] it was MPIC's position that the Appellant's cognitive condition improved such that he was left with very few remaining cognitive difficulties. His recovery plateaued and further assessments showed that he was able to perform the determined employment of Construction Inspector. However, the Appellant chose not to go on to pursue a return to work program or active job search.

This choice by the Appellant to not return to employment led to, among other things, the Appellant's depression and emotional difficulties. Therefore, counsel for MPIC submitted, the Appellant's further difficulties arose not from the accident, but from his conscious choice not to go back to work. In this way, MPIC discounted the effects of the motor vehicle accident and head injury, including the psychological and psychosocial stressors that followed.

The Appellant's evidence, which was confirmed by reports from [Appellant's Psychiatrist #2], [Appellant's Psychiatrist #1], [Appellant's Psychiatrist #3] and [Appellant's Psychiatrist #4], was

that his physical and mental capacity were both diminished, as a result of the accident. These deficiencies interfered with his capacity to work and to find employment. What followed was a resulting adjustment disorder triggered by his frustration with his deficiencies and difficulties, inability to work, and conflicts with MPIC. The Appellant's testimony was clear and un-contradicted that he did not have these problems prior to the motor vehicle accident.

The evidence on the Appellant's indexed file indicated that there are not a lot of jobs available in the field of Construction Inspector. The Appellant testified that it was hard to find jobs in that field and that he lacked the attention and concentration capabilities to perform the job, since distraction and a lack of memory continued to be a problem for him.

A report dated March 21, 2003 from [Appellant's Social Worker] indicated that:

> "Initially, [the Appellant] had very low insight to his injury or his impaired memory. He was very well motivated to return to work. People with impaired insight are the most dangerous in returning to a job where there is physical risk as they may not recognize their memory or judgement impairments... Because of the poor insight initially, the memory problems and the risk of [the Appellant's] occupation, it is highly recommended that the rehabilitation process be handled conservatively..."

He was sent to [Appellant's Neuropsychologist] for an assessment which identified cognitive impairments. [Appellant's Neuropsychologist's] report echoed findings of a lack of insight:

> "[The Appellant] approached his assessment in a matter-of-fact manner. His perspective was that he had no cognitive impairments at present. Indeed he felt that his memory may be superior to many other individuals. In his concentration however he indicated that if he was not interested in a topic, it would be "in one ear and out the other" which he felt was a normal pattern. He was very strongly motivated to be returning to his electrical work.
>
> ...Thus, insight into cognitive issues is limited."

This was followed by a list of cognitive deficits including difficulties with anterograde memory, significant impairment in visual concentration, slowness in dealing with two factors

simultaneously and a very slight visual inattention.

These findings were later summarized in a follow-up report by [Appellant's Neuropsychologist] dated October 29, 2004, which identified difficulties with concentration, distractibility and forgetfulness as well as lack of insight into these issues:

> "[The Appellant] has plateaued in his recovery in one neuropsychological function over the past several months. This refers to his speed in responding to two factors almost simultaneously (in resisting distraction). However this is not simply a concentration function, since [the Appellant] was moderately slow in another measure of eye-to-hand function (clerical speed and accuracy), and at the low end of an average range in a related format.
>
> No further improvement is anticipated in this, since we are at the two-year point postinjury, and since [the Appellant's] test results have been similar for the past several months.
>
> In practical terms, this translates into [the Appellant] being slower with certain types of multitasking. However it is important to note, that as far as we are aware, no cognitive difficulties have been noted by his employers. Moreover he has been found to be normal in all other cognitive functions, and it is particularly notable that his mechanical reasoning is very strong."

In his testimony, the Appellant confirmed these difficulties, describing his ongoing problems with memory, concentration, multi-tasking and follow through.

The Appellant also showed signs of anxiety and depression.

MPIC argued that the choice not to work created financial hardship which then precipitated the Appellant's depression. However, the panel notes that the Appellant was found to be depressed at a much earlier point in time, and that he saw [Appellant's Psychiatrist #1] for depression as early as 2004, as noted by [Appellant's Psychiatrist #1's] report dated August 11, 2004. [Appellant's Psychiatrist #1] reported on July 4, 2005 regarding an Axis I diagnosis of adjustment disorder with mixed emotional features (anxiety and depression), Axis III diagnosis

of physical sequelae to MVA (chronic pain, soft tissue injury, headaches and Traumatic Brain Injury, and Axis IV psychosocial sequelae of MVA (unemployment, extended disability, social and occupational changes). This occurred long before the two year determination conducted by MPIC in July of 2006, when the Appellant was accorded a final year of IRI benefits.

Accordingly, based upon the evidence before it, the panel does not agree with counsel for MPIC that the Appellant's issues stem from his choice not to return to work. What is apparent to the panel is that the Appellant suffered from a brain injury in the motor vehicle accident with cognitive sequelae. He received a permanent impairment benefit for a severe brain injury.

A report from MPIC's Health Care Services team dated June 24, 2007 described treatment and improvement in regard to some of these deficits. However, remaining impairments were still recognized and [MPIC's Doctor] recommended a 7.5% permanent impairment benefit "pertaining to cognitive disorder that minimally disrupts the performance of activities of daily living without the need for supervision including the side effects of medication".

The Appellant was still struggling with his depression when the permanent impairment benefit was awarded. The frustrations which followed, through his inability to perform at the job he held prior to the motor vehicle accident or at his determined employment, contributed to his psychological condition. The Appellant's testimony clearly expressed his frustration with the cognitive changes he had experienced as well as the changes to his life, and the depression and anxiety which resulted. The panel finds that due to the Appellant's cognitive injuries and the resulting psychological impact of the motor vehicle accident and those injuries, the Appellant required further psychological intervention to provide him with the support and tools needed to deal with these disruptions.

The Appellant's brain injury and its effects on cognition following the motor vehicle accident were objectively documented by [Appellant's Neuropsychologist] and [Appellant's Doctor]. A review by [Appellant's Psychiatrist #4] (supervised by [Appellant's Neuropsychologist]) dated September 11, 2009 resulted in the following impression:

> "[The Appellant's] current psychosocial stressors such as his minimal finances and his inability to work in his chosen field are very likely to be contributing to his depressive symptoms. However, it is notable that he did not have a history of depression prior to his head injury sustained in the accident in 2002. It is therefore possible that his general medical condition is a direct factor contributing to his depressive symptoms...
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> **Multiaxial Diagnosis**
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> Axis I Major Depressive Episode versus Mood Disorder due to a general medical condition (head injury)
> Alcohol abuse
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> Axis II Deferred
>
> Axis III Head injury
> Neck and shoulder pain related to cervical fractures
>
> Axis IV Currently unemployed
> Minimal finances
> Few social supports
>
> Axis V 60"

In a report dated February 1, 2012, [Appellant's Neuropsychologist] noted that it was unclear whether the Appellant had been consistently depressed since the psychological assessments in 2008 and 2009, or whether the depression had been recurrent. However, he confirmed that it was possible that the depressive symptoms were related to the motor vehicle accident in the sense that he still had difficulty accepting that he could not return to all his pre-injury duties.

[Appellant's Neuropsychologist] concluded:

> "[The Appellant] is currently a good candidate for psychotherapy. This is based upon the fact that his level of depression warrants treatment, that he reports benefiting from having seen [Appellant's Psychiatrist #1], and indeed reported having felt better simply from our

> own conversation. I would recommend that [the Appellant] return to see [Appellant's Psychiatrist #1] if MPI is able to authorize this. [The Appellant] was receptive to having further contact with mental health providers."

On June 11, 2012 [Appellant's Physiatrist] again asked MPIC to consider funding treatment for depression which [Appellant's Physiatrist] believed was related to the accident. He referred the Appellant to [Appellant's Psychiatrist #1] for psychotherapy.

[Appellant's Physiatrist] saw the Appellant for several years following the motor vehicle accident. He continued to express his concerns for the Appellant in his reports. For example, in a report dated November 12, 2010, [Appellant's Physiatrist] indicated:

> "Brain Injury: The patient did suffer a closed head injury as his initial Glasgow Coma Scale; October 30, 2002 was 7. His CT scan was negative but he did suffer a fracture of T1 and C6-C7. He was also intoxicated at the time and suffered from alcohol abuse in the past. As he came out of coma he was confused and agitated, but very quickly began to awaken and walk about. He also suffered mild weakness of left shoulder at C5 i.e. the suprascapular nerve.
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> I do not think that mentally or physically that the above patient can perform the duties of [text deleted]. He had also suffered a left thumb IP joint dislocation which continues to give him pain.
>
> I am of the opinion that the patient's cognitive ability from his injury prevents him from performing the duties of [text deleted].
>
> It being eight years since the accident I do not think that the patient will improve any further and sadly I think that his prognosis is poor – that is that he is not competitively employable. He was drinking a substantial amount of alcohol but has now been abstinent for several months. This he had to comply in order to maintain his driver's license.
>
> I do think that psychological treatment would be of benefit to this patient. He has been in the past been (sic) known to both our psychologist [Appellant's Neuropsychologist] and a psychiatrist [Appellant's Psychiatrist #5] and I believe assistance, especially in the neuropsychological area had helped him considerably in the past. He had been followed by [Appellant's Psychiatrist #1] here at [Hospital]."

Most recent reports relied upon by the Appellant were from [Appellant's Psychiatrist #2] of the [text deleted] and [Appellant's Psychiatrist #3].

On February 25, 2013, [Appellant's Psychiatrist #2] reported following the Appellant's admission to [Hospital] in January of 2013:

> "As you are aware, [the Appellant] was involved in a serious car crash in 2002, at which time he sustained a head injury. Since that time he reports that "I am not the same as I was". By this, he means he has found it impossible to function in his daily life as he did before. He specifically notes emotion control problems, difficulty problem solving, and difficulties understanding tasks or maintaining plans for any extended period of time. As well, he reports simple tasks that he used to be able to manage quickly, become overwhelming and after any period of extended concentration, he states he is no longer able to coordinate a variety of activities or remain focussed on any particular task. He also states that members of his family have noticed a change in his personality as he is no longer able to support others or communicate effectively as he did before. There has overall been a pronounced change in his functioning. Additionally, he has experienced a variety of other physical difficulties.
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> Our assessment of [the Appellant's] functioning during his inpatient admission, which lasted weeks, was consistent with the above. Although [the Appellant] initially presents as superficially capable of maintaining a conversation and his cognition appears initially intact, many deficits emerged during observation on the unit. [The Appellant] became easily frustrated but had great difficulty communicating this frustration. When frustrated, he was not able to explain what challenged him but instead had to withdraw from tasks. Although he regularly experienced anger and frustration, he at times did not recognize this and always found it difficult to modulate and problem solve around his angry and frustrated emotions. As well, the speed with which he can process and plan activities, including coordinating his schedule around the units were impaired. When given one simple task he could perform it in an expected amount of time but we noticed significant delay when there were several demands co-occurring for [the Appellant].
>
> [The Appellant's] problems do not seem to be related to any specific Axis I Psychiatric Disorder. The persistent nature of his problems as well as the timing of onset and in light of his previous high functioning suggest to me that these impairments are due to the injuries he sustained in 2002. Collateral obtained from his family is also consistent with this."

[Appellant's Psychiatrist #3] reported most recently, with a psychological progress report completed on April 24, 2013. He described an adjustment disorder involving anger management and stated that in his opinion it was directly related to the motor vehicle accident. In his view, the Appellant's psychological condition precluded ability to work and posed a safety or health risk to the Appellant or others. He was physically unable to perform and cognitive functioning

was possibly affected by physical trauma. [Appellant's Psychiatrist #3] opined that the Appellant needed further assistance to help him cope with the stress and emotional issues related to his injury and the MPI process. He recommended CBT (Cognitive Behavioral Therapy) to cope with the accident and resulting stress of negotiating with MPIC, as well as for acceptance of circumstances.

MPIC has argued that the Appellant has shown no demonstrated benefit with this treatment. The panel disagrees. The Appellant's testimony described the work he was doing with [Appellant's Psychiatrist #1] in cognitive behavioral therapy, describing as well some of the strategies which they had attempted, and the trial and error process of discovering which approaches might be successful for him.

We find that the medical reports show that although the Appellant began treatment with impaired auditory attention, impaired memory function, slow processing speed, decreased verbal functioning, and lack of insight; however, with treatment, he has been able to address strategies for dealing with these issues and has improved his insight. [Appellant's Psychiatrist #1], in his report dated October 16, 2007, described this work as follows:

> "Regarding our treatment, a cognitive-behavior approach have been utilized to assist [the Appellant] with different pain management techniques, coping skills, and in the treatment of his mood and sleep difficulties. His response to our treatments has been positive, he has been attending monthly and found it useful to discuss issues pertaining to his psychological status as well as vocational future. Although he does not possess sufficient criteria for the diagnosis of Clinical Depression, Anxiety Disorder, PTSD, or mental disorders, he continues to possess elements of mood disorder. He is also complaining of constant pain and sleep difficulties. We do believe that psychological difficulties at present are not permanent and the ongoing psychological treatments has been assisting him to keep active, continue looking for employment and gradually return to work.
>
> In terms of his ongoing treatment and its necessity to [the Appellant's] functions, we do believe that the monthly sessions had been helpful to [the Appellant] in maintaining his efforts to keep active, assisting with mood and sleep difficulties, as well as his efforts in looking for work. In our next meeting with him, we will discuss the tapering off of his

ongoing psychological treatments and we will advise you accordingly."

The panel's review of the evidence also included reports from [Appellant's Neuropsychologist] which indicated that the Appellant had improved in many areas of cognition. However, he still had difficulties with distraction, memory and concentration. These difficulties were and still are problematic, and have been compounded by the Appellant's lack of insight into his difficulties, which is another sequelae of a head injury.

The panel finds that the Appellant's psychological condition has improved, but still requires further treatment. The Appellant has therefore established that he is entitled to further psychological treatment benefits as a result of the motor vehicle accident. The panel finds that the Appellant should be entitled to MPIC funded psychological treatment, including cognitive behavioral therapy, and will refer this matter back to the Appellant's case manager for assistance and arrangements.

The panel has noted the Appellant's argument that the two year job determination provided to him by MPIC was wrong and that he could not do the job of a Construction Inspector. The Appellant's testimony and demeanour did illustrate a number of deficits, including memory problems, concentration, distractibility and problems with focus, which could make it very difficult for him to obtain and perform such a position.

However, the question for the panel on this appeal was limited to the issue of psychological treatment benefits. We have noted the report of [Appellant's Psychiatrist #2] of February 25, 2013 which stated:

"[The Appellant] tells me that he has been assessed as capable of working at moderately complex jobs. Based on his presentation during his inpatient admission, it seemed likely

> that [the Appellant's] deficits would keep him from working at any job at all. I hope that it would be possible for you to reassess his functional level..."

This report was prepared on February 25, 2013, several years after the two year job determination. [Appellant's Psychiatrist #3] gave a similar opinion in April of 2013. It is possible that with the passage of time and in the absence of appropriate therapy, the Appellant's condition may have worsened over time. However, the question of the Appellant's determination of employment is not currently before the Commission on this appeal.

Therefore, the Appellant may wish to consider making application to MPIC to reconsider this new information.

Corporation may reconsider new information

171(1) The corporation may at any time make a fresh decision in respect of a claim for compensation where it is satisfied that new information is available in respect of the claim.

Corporation to assist in rehabilitation

138 Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

Relapse after more than two years

117(3) A victim who suffers a relapse more than two years after the times referred to in clauses (1)(a) and (b) is entitled to compensation as if the relapse were a second accident.

The panel notes that the Appellant is self-represented and does not have assistance from counsel or other representative. Accordingly, he may wish to request that his case manager exercise his/her discretion and duty (pursuant to Section 150 of the MPIC Act) to assist him with this

issue.

The Commission recommends that a review of these sections of the MPIC Act, along with the more recent reports obtained from [Appellant's Psychiatrist #2] and [Appellant's Psychiatrist #3], be undertaken by the Appellant, together with his case manager, in order to determine whether the two year determination remains appropriate.

The panel finds that the Appellant shall be entitled to psychological treatment benefits. The Internal Review Decision dated October 30, 2012 is overturned and the assessment and arrangement of psychological treatment benefits, including cognitive behavioral therapy, will be referred back to the Appellant's case manager. The Appellant's appeal is allowed.

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

LAURA DIAMOND

MARY LYNN BROOKS

JACQUELINE FREEDMAN