

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-089**

PANEL: Ms Laura Diamond, Chairperson
Ms Jacqueline Freedman
Ms Linda Newton

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

HEARING DATE: July 15, 2015

ISSUE(S): Whether the Appellant's benefits were properly terminated pursuant to Section 160(a) of the MPIC Act and, if not, whether the Appellant was functionally incapable of working following the motor vehicle accident.

RELEVANT SECTIONS: Sections 85(1), 86(1) and 160(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

The Appellant was injured in a motor vehicle accident on August 31, 2003. Prior to the motor vehicle accident the Appellant had worked as a lawyer and an [text deleted] teacher. However, the Appellant had been unemployed at the time of the accident, and was classified as a non-earner.

In 2005, MPIC provided the Appellant with two case management decisions affecting her entitlement to benefits.

On October 28, 2005 the case manager advised that the Appellant had not established that she would have held any employment during the first 180 days following the motor vehicle accident. As such she was classified as a non-earner and would not be entitled to IRI benefits for that period. As well, the case manager noted that the Appellant had not established an inability to hold employment for that period as she did not have a physical impairment of function that would prevent her from returning to her previous occupations. (In addition, the case manager indicated that since the Appellant did not have a medical condition related to the accident which required supervised treatment interventions or the implementation of assistant devices, MPIC would not provide funding for same.)

On November 9, 2005, the case manager issued a decision regarding the Appellant's claim for injuries sustained to her neck and back as a result of the August 31, 2003 motor vehicle accident and her claim that she had been unable to work since that time. The case manager referred to medical information on the Appellant's file, including self-reported levels of function and an independent medical examination. The case manager concluded that her benefits should be terminated pursuant to Section 160 of the MPIC Act:

“Contrary to the advice that you have provided to MPI and your caregivers, our investigation reveals that you are capable of performing all of the functions described above. You have been observed standing, walking, bending and moving your head with no visible discomfort and for substantial lengths of time. You have also been observed carrying bags in both hands despite your advice that you have little to no grasping ability in your hands.

Your entitlement to PIPP benefits is therefore terminated.”

The Appellant sought an Internal Review of this decision.

On July 24, 2008, an Internal Review Officer for MPIC upheld the case manager's decisions. The Internal Review Officer reviewed the Appellant's medical file, as well as video surveillance and supportive statements from friends of the Appellant. An independent medical examiner, [text deleted] had assessed the Appellant and been asked to view the video surveillance. He provided reports which concluded that the Appellant did not have a physical impairment to account for any disability related to her previous occupation. MPIC's Health Care consultant had reviewed the reports as well as the video surveillance and concluded that although the Appellant's reported level of function reflected an individual that was significantly impaired, she did in fact have the physical capabilities to return to work as a teacher and lawyer. Although the Appellant had suffered from a previous motor vehicle accident in 1997, the 2003 accident would have resulted in an exacerbation of her previous injuries but not an inability to perform all type of work duties.

The Internal Review Officer concluded that the medical information on the Appellant's file did not substantiate that she had an impairment of function that would preclude her from performing the essential duties of the sedentary employment she had previously occupied. She was not entitled to any IRI within or after the first 180 days following the motor vehicle accident. Further, the medical evidence did not establish that further medical treatment was medically required in relation to any injuries that may have been sustained in the motor vehicle accident. The Internal Review Officer agreed that the investigative materials on the Appellant's file established that she knowingly provided false or inaccurate information to MPIC with respect to her reported level of function and the case manager's decision terminating benefits pursuant to Section 160(a) of the MPIC Act was upheld.

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

Preliminary Matters:

The Appellant filed a Notice of Appeal on September 5, 2008 and indicated that she would be represented by [Appellant's legal counsel] of [text deleted]. The Commission, in communication with [Appellant's legal counsel], prepared an indexed file, as well as a supplementary index, which were provided for the Appellant's review. However, in August of 2010, counsel indicated that although the Appellant has the index (in [city] where she was residing) she was ill and had not been able to complete her review. Some psychiatric reports were provided, from her caregiver, [Appellant's psychiatrist #1], in 2011. However, counsel indicated that he was having difficulty obtaining instructions from his client.

The Commission held a series of Case Conference Hearings with [Appellant's legal counsel] and counsel for MPIC in 2011. However, [Appellant's legal counsel] indicated that he had not been able to receive any communications from his client.

Following further correspondence and Case Conference Hearings in 2012, [Appellant's legal counsel] indicated again in August of 2012 that he was having difficulty getting in contact with his client. Although he attempted to contact the Appellant through her treating psychiatrist, [Appellant's psychiatrist #1], he was advised that the Appellant was moving to a new apartment in January of 2013 and would not have the time and energy to address her legal issues until she was settled.

Further Case Conference Hearings were scheduled in 2013. [Appellant's legal counsel] advised that he had sent a registered letter to the Appellant's psychiatrist and to the Appellant advising that if he did not receive contact from her he would be withdrawing his representation. [Appellant's psychiatrist #1] provided a contact address for the Appellant in [city]. On April 11,

2013, the Commission wrote to the Appellant at that address, enclosing a letter previously sent to her on March 19, 2013. This set out the history of Case Conference Hearings and [Appellant's legal counsel's] intention to withdraw as her representative. The Commission requested that the Appellant review the letter and advise the Commission how she would like to proceed with her appeal, by May 10, 2013.

On May 10, 2013 the Commission received an email from the Appellant confirming her current address but failing to indicate whether she wished to have [Appellant's legal counsel] continue to assist her with her appeal.

In June of 2013, [Appellant's legal counsel] responded to inquiries from the Commission to advise that he was still awaiting instruction from the Appellant. The Commission wrote to [Appellant's legal counsel] on June 25, 2013 requesting that he advise the Commission as to whether he would be representing the Appellant with respect to the appeal. Without such information from him or the Appellant, the Commission would consider setting the matter peremptorily for an abandonment hearing.

As the Appellant and [Appellant's legal counsel] did not respond to this request, a Case Conference Hearing was scheduled for November 20, 2013, by teleconference. The Appellant did not appear or participate by telephone. [Appellant's legal counsel] indicated that although he was having difficulty contacting the Appellant to receive instructions, he did not wish to abandon her or her appeal and would continue to represent her.

A further Case Conference Hearing was held by the Commission on April 1, 2014. [Appellant's legal counsel] indicated that he still had not heard from the Appellant. Counsel for MPIC

requested that an abandonment hearing be scheduled. An abandonment hearing was scheduled for July 24, 2014 and Notice of the hearing was provided to the Appellant and [Appellant's legal counsel], as well as to MPIC. The Appellant did not participate in the abandonment hearing, but a panel of the Commission heard submissions from counsel for MPIC and from [Appellant's legal counsel]. MPIC made a motion that the Appellant's appeal be dismissed for abandonment and [Appellant's legal counsel] opposed this motion.

The panel considered the criteria applied by the Commission regarding whether there had been an abandonment and determined that while the Appellant had failed to display a continuous intention to appeal or provide a reasonable explanation for her failure to prosecute her appeal, there were arguable grounds to support the hearing of the appeal. The panel concluded that this was not the type of case where the Appellant simply filed a Notice of Appeal and did not provide further or additional evidence or submissions. There was some evidence on the file supporting, to whatever extent, both parties' versions of events and the panel was of the view that this presented an arguable case that the Commission should hear and was capable of assessing.

Although [Appellant's legal counsel] had requested an indefinite adjournment of the appeal, the panel found that this would result in prejudice to MPIC and was not reasonable in light of the Commission's duty to deal with the matter as expeditiously and fairly as possible. [Appellant's legal counsel's] request for an indefinite adjournment of the appeal was denied and the appeal should be set down for hearing.

At a Case Conference Hearing held October 2, 2014, it was determined that the appeal would be set down for hearing. Prior to setting dates, the Commission requested that [Appellant's legal counsel] determine and provide information with regard to the Appellant's level of participation

in the appeal hearing and his own level of participation. On January 9, 2015, [Appellant's legal counsel] wrote to the Commission to advise that the Appellant's level of participation in the appeal hearing would be for her alone to determine. He indicated:

“This will confirm that the level of participation in the appeal hearing will be for her alone to determine at the case conference hearing to be held. If she chooses not to participate on that date in person or by telephone, the Appeal Commission can proceed to decide this appeal based on the written submission of the writer below combined with an opportunity to respond to the oral or written submission of the MPI expecting (sic) the merits of this appeal. This will be my sole participation in the appeal process.”

[Appellant's legal counsel] then provided a five page summary regarding the merits of the Appellant's appeal.

A hearing of the Appellant's appeal was scheduled for July 15, 2015 at 9:30 a.m. The Notice of Hearing, dated April 29, 2015, provided that the hearing would be held via teleconference. The Appellant was served with a Notice of Hearing at the new address which had been provided by [Appellant's psychiatrist #1] and confirmed by the Appellant by email. The Notice was sent by Xpresspost and regular mail. The Xpresspost was returned unclaimed on May 21, 2015 and the regular mail was not returned and was assumed delivered.

[Appellant's legal counsel] was also provided with a copy of the Notice of Hearing.

The Notice of Hearing indicated that should either of the parties fail to appear or be represented at the hearing, the Commission may proceed with the hearing and render its decision.

Section 184.1 of the MPIC Act provides:

How notices and orders may be given to appellant

184.1(1) Under sections 182 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(a) personally; or

(b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

When mailed notice received

184.1(2) A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

Accordingly, the hearing into the Appellant's appeal was convened at 9:45 a.m. on July 15, 2015, in order to give the Appellant, who did not appear and did not telephone, a chance to participate. The Appellant did not participate in the hearing. The panel heard submissions from counsel for MPIC and reviewed the summary provided by the Appellant's former counsel, [Appellant's legal counsel].

Issue:

The issue before the panel was whether the Appellant's benefits were properly terminated pursuant to Section 160(a) of the MPIC Act and, if not, whether she was functionally incapable of working following the motor vehicle accident. The panel has concluded that the Appellant has failed to establish that she was functionally incapable of working following the motor vehicle accident. We have also found that the Appellant has failed to establish that she did not knowingly provide MPIC with false and inaccurate information pursuant to Section 160(a) of the MPIC Act.

Evidence and Submissions for the Appellant:

The Appellant did not participate in the hearing of her appeal. She did not appear in person or by teleconference and did not provide testimony. However, the panel was able to review written submissions and statements provided by the Appellant which described and discussed her symptoms and ability to function and which also commented upon the material depicted in the video surveillance conducted by MPIC. The panel was also able to review statements provided by friends of the Appellant who had accompanied her during the activities depicted in the video tapes, as well as medical information, from various caregivers, contained in the Appellant's indexed file.

In addition, the panel had the benefit of reviewing the summary provided by [Appellant's legal counsel], former counsel to the Appellant, which reviewed, summarized, and provided commentary on all of this evidence, and the evidence provided by MPIC's Health Care Services' consultant.

The position of the Appellant, based upon all of this documentation was that she was functionally incapable of working, for psychological reasons, in the period following the motor vehicle accident, and ever since. References to the Appellant's psychological issues were found in the following reports:

1. Independent medical evaluation report by [text deleted], independent expert in occupational medicine, dated July 14, 2005.

[Independent medical examiner] recognized that psychological factors may be playing a significant part in the Appellant's recovery or lack thereof and that too much attention had been paid to causation issues rather than symptom management.

2. Video surveillance report from [independent medical examiner] dated August 10, 2007.

[Independent medical examiner] stated that he believed that the Appellant's behaviour was secondary to a psychological component.

3. Reports from MPIC's Health Care consultant.

These reports focused upon the Appellant's physical symptoms and fail to recognize the psychological components of her distress.

4. Report from psychiatrist, [Appellant's psychiatrist #2] dated March 13, 2008.

[Appellant's psychiatrist #2] stated that the Appellant felt that her anxiety and chronic depression made her feel paralyzed and unable to communicate with her counsel in a timely manner and further that she continued to experience neck pain and stiffness and osteoarthritis in her arm and hands.

5. Summaries provided by two of the Appellant's friends (commenting upon the video surveillance) reiterated both the physical and psychological difficulties the Appellant was experiencing.

6. Letter from the Appellant to [rehabilitation consulting service], date June 25, 2000.

The Appellant spoke to her stress and lack of sleep, indicating that MPIC's actions "have unfortunately achieved nothing else than add further stress to my already extremely stressful circumstances, with the unavoidable consequences on both my mental and physical health."

[Appellant's legal counsel] also provided reports by [Appellant's psychiatrist #1] from 2011, which stated that the Appellant was experiencing significant psychological stressors which had caused her mental health to deteriorate. She had lost her practice as a result of the motor vehicle accident and the loss of her practice precipitated the development of a Major Depressive Disorder. These symptoms impaired her ability to function and participate in activities beyond those essential for daily living.

[Appellant's legal counsel's] summary submitted that given the assessment and opinion of [text deleted], the independent medical examiner, that the Appellant had suffered serious permanent and disabling psychological injuries, on the balance of probabilities, the Commission should accept this finding of the expert engaged by MPIC. It was submitted that MPIC could have chosen to have a psychologist or psychiatrist assess the Appellant and even contradict the findings of [independent medical examiner], but they had chosen not to do so. The Appellant then had her benefits terminated pursuant to Section 160(a) of the MPIC Act, instead of having her inability to work validated by MPIC and benefits paid to her. It was submitted that MPIC failed the Appellant and contributed to her becoming permanently and totally disabled by virtue of psychological symptoms caused by the accident.

[Appellant's legal counsel's] summary further submitted that, in order to prove what is in essence an allegation of fraud, it would be necessary to prove that there had been a deliberate intent to mislead, for a finding under Section 160(a) to be upheld.

It was submitted that the statements provided by the Appellant and her two friends established that the Appellant suffered from psychological symptoms. These provided adequate evidence for the Commission to find that MPIC had not proven, on the balance of probabilities, any deliberate intent by the Appellant to deceive. He submitted that the onus was on MPIC to prove, on a balance of probabilities that the appellant had violated Section 160(a) and MPIC had failed to produce any evidence to do so. All of the evidence supported the conclusion that the Appellant had psychological impairments caused by the motor vehicle accident which were genuine and disabling. She had the genuine perception that she had real pain and real physical injuries.

Accordingly, it was submitted that the Appellant's claim file should be reopened and reactivated with a direction from the Commission to address psychological symptoms caused by the motor vehicle accident which were disabling the Appellant from working. The Appellant's appeal should be allowed and she should be retroactively accorded full Personal Injury Protection Plan ("PIPP") benefits.

Evidence and Submission for MPIC:

MPIC relied upon medical evidence in the Appellant's file from caregivers, the independent assessor ([text deleted]) and its Health Care consultants. It also relied upon video tape surveillance evidence which depicted the Appellant on several different dates. The panel viewed portions of the video tape which depicted the Appellant, with her friends and alone, moving

about, both on foot and by vehicle, shopping, loading and carrying goods as well as attending restaurants and stores.

Counsel for MPIC submitted that the onus of establishing that the Internal Review Officer's decision was incorrect lay with the Appellant. The Appellant had failed to attend the hearing, despite being properly notified and thus, had failed to satisfy the onus upon her to establish on a balance of probabilities that the appeal should be allowed.

In the seven years since the Internal Review decision was issued, the Appellant had failed to provide any objective medical evidence supporting her position. Further, her lack of attention to the appeal is well documented and supported by the evidence on her file, as well as her representative's inability to even remain in contact with her, despite multiple warnings that her failure to do so could result in the appeal being dismissed. The Appellant did not participate in the abandonment hearing held on July 24, 2014 and in fact, the Commission had found that she had not shown a continuous intention to prosecute her appeal or provided a reasonable excuse for failing to do so.

Counsel reviewed Level of Function forms completed by the Appellant and dated August 3, 2005. These reflected an individual who was significantly impaired. However, video surveillance taken of the Appellant on July 13, 14 and 15, 2005 (at the same time as the independent medical examination was being performed) show a different story. At the request of the Appellant's representative at the time, the video surveillance was then submitted to [text deleted], the occupational medicine specialist who had performed the independent medical examination. [Independent medical examiner] reviewed the surveillance and reported again on August 10, 2007 with his observations. Following this review, [independent medical examiner]

concluded that the Appellant had exaggerated her symptoms in his clinical facility and that there had been poor effort in the maximum voluntary effort test she took. He concluded that the Appellant had reached maximum medical recovery and he was no longer in a position to recommend a treatment to help her. He also concluded that the Appellant was able to return to work full-time indicating:

“The inconsistencies between her self-reports of symptoms and level of function at the time of my assessment, and the level of function demonstrated on the videotape surveillance (which was taken around the same period of time), leaves me no alternative but to suggest she return to work immediately.”

[MPIC’s doctor], a consultant with MPIC’s Health Care Services Department, also reviewed the surveillance and provided a report dated October 18, 2005. He noted the functional difficulties listed by the Appellant in her Level of Function report (unable to lift, bend, push, pull, twist or turn head) and stated:

“The information obtained from this report reflects an individual that is significantly impaired. [The Appellant] indicates she has difficulty performing even basic day-to-day tasks. The report does not outline reasons she is unable to do the noted activities other than difficulties using her hands. The report makes reference to the August 31, 2003 motor vehicle incident and based on this, it is assumed that these difficulties have persisted since that time. This would lead me to conclude that [the Appellant] perceived herself as being significantly disabled over an extended period of time. Based on this, it is reasonable to conclude that an individual with this type of impairment over an assumed period of time would present objectively with significant limitations and functional deficits, in all probability.”

In his review of the video surveillance, the consultant observed that the Appellant exhibited full cervical range of motion without limitation of upper extremity range of motion and/or strength. There was spinal range of motion within normal range, normal gait, no signs of arm dysfunction and no compensatory movements were observed.

“The video surveillance depicts an individual that does not have a physical impairment of function per se. It is my opinion [the Appellant] did not present as an individual that has a significant impairment of function that adversely affected day-to-day activities and/or prevented her from working in a sedentary environment. It is my opinion [the Appellant’s] observed functional capabilities far exceed those she reported. At this

time, I am unable to provide a plausible medical explanation that would account for the marked discrepancy between reported and observed function. It should be noted that the video surveillance tape was performed the day she was assessed by [independent medical examiner] (the same day she reported a significant level of dysfunction).”

Counsel submitted that based on the video surveillance, as well as the conclusions of [independent medical examiner] and [MPIC’s doctor] it is clear that the Appellant’s actual functionality at the time of the surveillance was markedly different from the information she was providing to MPIC. The video surveillance, it was submitted, did not show an individual with debilitating motor vehicle accident injuries but rather showed a normal person going about normal daily activities. There was no evidence to suggest that this false information was not knowingly provided and, accordingly, MPIC submitted that the Appellant’s appeal regarding her Section 160 termination should be dismissed.

Counsel explained that Section 86(a) of the MPIC Act entitles non-earners to be classified into determined employment at the first 180 days after the motor vehicle accident if they are unable to hold employment because of the accident. However, since the Appellant was able to hold employment at that time, no 180 day determination was conducted. MPIC took the position that within a couple of weeks of the accident, the Appellant was able to work supernumerary. Her family physician in [city] (where she had moved following the accident) explained that although he had minimal involvement with respect to the Appellant’s injuries sustained in the motor vehicle accident, she still occasionally complained of neck pain, although her visits to his office related to other medical issues. There was no discussion of any work restrictions resulting from the accident.

As the Appellant's previous occupations of lawyer and teacher had been sedentary, [independent medical examiner] indicated on July 14, 2005 that the Appellant had the physical ability to return to this sedentary employment.

After reviewing the surveillance tapes, both [MPIC's doctor] and [independent medical examiner] confirmed that there was no physical impairment of function arising from the motor vehicle accident that would preclude the Appellant from performing her previous occupational duties.

Counsel submitted that the Appellant had not submitted objective medical evidence that could reasonably refute the conclusions from [MPIC's doctor] and [independent medical examiner] about her functional capacity following accident. There was no evidence suggesting that the Appellant could not work and no diagnosis of a psychological condition which would prevent her from working. The Appellant had refused to allow or authorize an examination of her psychological records for the purposes of this appeal. Without a psychological diagnosis as a result of a motor vehicle accident or evidence of a psychological condition adversely affecting the Appellant's ability to accurately report her condition or tell the truth, the Appellant's mere references to a possible psychological condition were not sufficient to support her appeal. Counsel submitted that while the Appellant was reporting that she was not able to do something, she was actually doing those things and as such, she could not be said to believe the claim she was making. Rather, it was clear that she was knowingly providing false information.

Accordingly, counsel submitted that the Appellant's appeal should be dismissed.

Discussion:

The MPIC Act provides:

Entitlement to I.R.I. for first 180 days

85(1) A non-earner is entitled to an income replacement indemnity for any time during the 180 days after an accident that the following occurs as a result of the accident:

- (a) he or she is unable to hold an employment that he or she would have held during that period if the accident had not occurred;
- (b) he or she is deprived of a benefit under the *Employment Insurance Act* (Canada) to which he or she was entitled at the time of the accident.

Entitlement to I.R.I. after first 180 days

86(1) For the purpose of compensation from the 181st day after the accident, the corporation shall determine an employment for the non-earner in accordance with section 106, and the non-earner is entitled to an income replacement indemnity if he or she is not able because of the accident to hold the employment, and the income replacement indemnity shall be not less than any income replacement indemnity the non-earner was receiving during the first 180 days after the accident.

Corporation may refuse or terminate compensation

160 The corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity, where the person

- (a) knowingly provides false or inaccurate information to the corporation;

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officer erred in finding that she was functionally capable of working after her accident and that the Appellant had knowingly provided false or inaccurate information to the Corporation.

The panel has carefully reviewed the evidence in the Appellant's indexed file, including written notes from the Appellant and the written summary provided by her former representative, as well as the submission of counsel for MPIC.

The panel agrees with counsel for MPIC that the Appellant has failed to establish, on a balance of probabilities, that the Internal Review Officer was wrong in finding that the Appellant had knowingly provided false or inaccurate information to the corporation.

The panel's observation of the videotapes from the surveillance investigation show the Appellant walking and moving fluidly, at a normal, brisk and comfortable gait. The Appellant's appearance did not indicate that she found such movements difficult. We observed no grimaces or tentative, protective behaviour. The Appellant appeared animated, relaxed, and smiling. She appeared to take the lead with both of her friends depicted in the videotapes, who gave her no assistance. They didn't seem to try to be close to her to give assistance and there did not seem to be any need for them to be concerned about her or her ability to move or handle objects.

The material viewed on the videotapes was very different from the self-reports of the Appellant's abilities which were documented in the indexed file.

The Appellant's former representative submitted that the Appellant did not possess a knowing or deliberate intent to mislead. Rather, it was submitted that her psychological symptoms accounted for a genuine perception that she had real pain and that she had not knowingly provided false information. However, counsel for MPIC submitted that no diagnosis had been confirmed which would indicate that the Appellant had a cognitive impairment impacting upon her ability to report and relay the truth or to know the difference between right and wrong.

[Independent medical examiner] had recognized that the Appellant may have an ill conceived perception of the degree of her disability, with real or truly believed symptoms. However, [independent medical examiner's] report did not indicate that the Appellant had an inability to

properly report upon what she could or could not do. Counsel for MPIC submitted that if an Appellant is doing things while simultaneously reporting that she is not doing them, false information is being provided and the Appellant has made a false statement.

The panel agrees with counsel for MPIC and concludes that the Appellant did provide false information to the Corporation by falsely representing and exaggerating her symptoms and disabilities. The Commission finds that the Appellant has failed to establish that the Internal Review Officer erred in terminating her benefits pursuant to Section 160(a) of the MPIC Act.

The panel also finds that the Appellant was able to hold the employment she had held prior to the accident.

A review of the evidence on the Appellant's indexed file shows that no medical practitioner opined that she was physically unable to work, with the exception of some comments by her family practitioner, [text deleted], which stated that she had difficulty standing and writing on the board as a teacher. However, adaptive techniques were recommended to address this and her caregivers, as well as the independent assessor, all believed that she could continue with her sedentary employment as a teacher and lawyer.

Although [MPIC's doctor] and [independent medical examiner] did make passing references to stressors in the Appellant's life and the possible effects on her psychological well-being, neither of these physicians have psychological or psychiatric expertise. [Independent medical examiner], in his report of July 14, 2005, had noted comments by a [text deleted] psychiatrist, [Appellant's psychiatrist #3] from April 18, 2005 who noted that the Appellant, while stressed, had life issues and not psychiatric issues. While there was some correspondence on the file to

and from [Appellant's psychiatrist #1] (the Appellant's more recent psychiatrist), the Appellant provided the Commission with only two reports from [Appellant's psychiatrist #1] dated January 25, 2011 and August 16, 2011. These indicated that the Appellant was receiving treatment for Major Depressive Disorder, but did not provide any information regarding the onset of the condition or its causation. [Appellant's psychiatrist #1] seemed to rely upon the Appellant's assertion that the motor vehicle accident had caused her to lose her practice, which, in turn, had caused her depression. But [Appellant's psychiatrist #1] (who treated the Appellant and reported more than 10 years after the accident) did not, or was not able to, reliably examine and report regarding the veracity of such a cause and effect relationship between the accident and the Appellant's psychological symptoms. More in depth analysis and evidence would be required to establish such a connection.

Such evidence, needed to establish that she was not able to work due to a psychological condition or that she suffers from a psychological condition caused by the motor vehicle accident, was not provided by the Appellant.

Accordingly, the Commission finds that the Appellant has failed, on a balance of probabilities, to establish that she was unable to work as a result of the motor vehicle accident.

Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated July 24, 2008 is upheld.

Dated at Winnipeg this 20th day of August, 2015.

LAURA DIAMOND

JACQUELINE FREEDMAN

LINDA NEWTON