

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File Nos.: AC-12-049 and AC-13-060**

PANEL: Ms Laura Diamond, Chairperson
Ms Janet Frohlich
Ms Heather Mitchell

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Paul Simms of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATES: June 16 and 17, 2015

ISSUE(S): 1. Entitlement to Income Replacement Indemnity benefits beyond July 28, 2011.
2. Entitlement to Personal Injury Protection Plan benefits for cervical spine degenerative disc disease.

RELEVANT SECTIONS: Sections 71(1) and 110(1)(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 December 31, 1995, suffering injuries to her left shoulder, neck and back. She was in receipt of Income Replacement Indemnity ("IRI"), medication, physiotherapy and travel expense benefits. She was treated with physiotherapy, acupuncture and medication and continued to show improvement until February 13, 1996 when she requested to return to work on a part-time basis. She returned to work on a

full-time basis on March 5, 1996 and was discharged from physiotherapy at the end of March 1996.

Medical records show that the Appellant had a flare-up of symptoms and returned to physiotherapy in July 1996 and again on December 18, 1997.

The Appellant was employed as a [text deleted] client service agent, but took a leave as a result of neck and back pain on November 19, 2009. She was due to return to work on December 29, 2009. However, the Appellant was again injured in a motor vehicle accident on December 21, 2009, sustaining a soft tissue injury to her neck and back. The Appellant was in receipt of IRI and chiropractic care benefits until July 28, 2011.

On July 29, 2011, the Appellant's case manager indicated that the Appellant had recovered from medical conditions developed secondary to the motor vehicle accident. The decision referenced her pre-existing cervical disc condition and stated that the motor vehicle accident had not enhanced this condition. Accordingly, the case manager indicated that the Appellant's spine condition was not causally related to the motor vehicle accident and that the Appellant had regained the functional capacity to perform her pre-accident employment.

On January 20, 2012, an Internal Review Officer for MPIC upheld the case manager's decision. The Internal Review Officer reviewed medical information on the Appellant's file, including reports from her chiropractor, a medical consultant with MPIC's Health Care Services team, and from third party medical examinations. The Internal Review Officer concluded that any symptoms the Appellant might be experiencing were not a by-product of the motor vehicle accident. Her file documented pre-existing severe degenerative disc disease at the C5-C6 level

and possible radiculopathy prior to the motor vehicle accident, with the Appellant on medical leave for the above symptoms at the time of the accident. Medical information did not indicate that accident related injuries precluded the Appellant from continuing with her employment duties and as a result she was not entitled to IRI benefits beyond July 28, 2011.

The Appellant then asked MPIC to consider whether her cervical spine degenerative disc disease was causally related to her earlier motor vehicle accident of December 31, 1995. In a decision letter dated December 5, 2012, the Appellant's case manager indicated that a review of the medical documentation on the Appellant's files was completed by MPIC's Health Care Services team on November 29, 2012. This indicated that there was no cause/effect relationship between the December 31, 1995 motor vehicle accident and the Appellant's cervical spine degenerative disc disease.

On March 25, 2013, the case manager's decision was upheld by an Internal Review Officer. The Internal Review Officer reviewed the history of the 1995 accident with the medical documentation on her file and concluded:

“It is clear from the available information on file that you sustained soft tissue injuries as a direct result of the December 31, 1995 accident. However, it is my opinion that based on the medical information provided; a cause/effect relationship cannot be established between the December 31, 1995 motor vehicle accident and the cervical spine degenerative disc disease. Your physician's clinical notes document symptoms until 1997. [Appellant's chiropractor] did not see you until 2001, nearly four years later. As such, it is my opinion that the evidence does not support a relationship between your symptoms and the 1995 accident, in all probability.”

The Appellant has now appealed both the Internal Review decision dated January 20, 2012 (which held that her continuing symptoms were not a result of the motor vehicle accident of December 21, 2009), as well as the Internal Review decision dated March 25, 2013 (which found

that there was no causal connection between the motor vehicle accident of December 31, 1995 and the Appellant's cervical spine degenerative disc disease).

The panel has considered whether the Appellant was prevented from continuing her employment as a result of a condition arising out of either or both of these motor vehicle accidents. The issues before the Commission are whether the Appellant's cervical spine degenerative disc disease was caused by the 1995 motor vehicle accident and whether the 2009 motor vehicle accident enhanced her condition and prevented her from returning to her employment. The Commission finds that the Appellant's condition and symptoms after July 28, 2011 were caused by her degenerative spine condition which was not causally connected to the motor vehicle accident of December 1995 and that this condition was not permanently enhanced by the December 2009 motor vehicle accident.

Evidence and Submissions for the Appellant:

The Appellant provided various medical reports from her family doctors and chiropractor. She testified at the hearing into her appeal, as did her chiropractor.

The Appellant described the two motor vehicle accidents. She was treated by her family doctor after the first motor vehicle accident for a stiff, sore neck, pain in the shoulders and difficulty moving her left side. She attended for physiotherapy treatment and returned to work, first on a part-time and then a full-time basis. She described periodic flare-ups in 1996 and 1997 which also caused her to miss some time at work. She indicated that after that, she decided to just live with her discomfort.

In 2001, she started seeing a chiropractor for laser therapy and minor adjustments to her neck and shoulders. She worked in a [text deleted] office and her job involved a lot of computer work, processing paperwork and paycheques. She would go to see the chiropractor three or four times a year when she would have a flare-up, which might take two or three visits to resolve. In October 2009 she had a flare-up which involved a sore neck and shooting pains down her right arm. She did not respond well to chiropractic treatment and had to take three or four weeks off work.

The Appellant indicated that she was supposed to go back to work on December 29 and was feeling pretty good when she was involved in another motor vehicle accident on December 21, 2009. She saw her chiropractor the following day, because she was stiffening up again and in a lot of pain. Following treatment and a gradual return to work program, she was still feeling pain and having difficulty working.

She decided to retire because her condition was not improving and she had been advised to avoid extra pressure and strain on her neck.

The Appellant's chiropractor, [Appellant's chiropractor], was qualified as an expert in the chiropractic treatment of neck and back injuries. He first saw the Appellant in April of 2001 and continued treating her periodically, up to and following the motor vehicle accident in 2009. He provided reports regarding her condition following this second motor vehicle accident.

When he first saw the Appellant in 2001, she told him that the reason for her ongoing neck and back pain was the motor vehicle accident of December 1995. He diagnosed persistent neck and upper back pain with some lower back pain as well.

The chiropractor then noted an escalation in the presentation of the Appellant's symptoms following the motor vehicle accident of December 2009. X-rays dated November 2009 showed quite severe C5-C6 degenerative disc disease with posterior spurring, bone formation and ossification and damaged tissue. [Appellant's chiropractor] opined that this degenerative disc disease could affect the durability of the Appellant's spine and compromise her physical capacity to handle the trauma of the second motor vehicle accident. He also indicated that while degeneration could occur due to aging, this usually was spread among several levels. Severe degeneration in the cervical spine, as was found in the Appellant, was rare in someone of her age. He might expect to find such degeneration at the lumbar level, but not at the cervical level. In his view, the C5-C6 level of the spine was put under great strain when the head snapped back and forward, as would have occurred in the 1995 motor vehicle accident. This began a degenerative process at the C5-C6 level which ultimately led to the severe degenerative changes which the Appellant has had to endure to the present day.

Since the Appellant had identified the 1995 motor vehicle accident as the primary and only identifiable injury she had experienced in this area, [Appellant's chiropractor] concluded that this was the cause of her post-traumatic cervical dysfunction. The second motor vehicle accident, although perhaps a more minor event, occurred when the Appellant, who was suffering from degeneration and stenosis as a result of the first motor vehicle accident, could not absorb the trauma.

[Appellant's chiropractor] also described attempts at other forms of care and a temporary withdrawal of chiropractic care, which were not successful for the Appellant. He indicated that the Appellant currently attends for treatment once every three weeks for some upper thoracic

manipulation and hot laser therapy to deal with her neck pain and provide some functional restoration to her upper back.

He believed that the second motor vehicle accident in 2009 was a game changer or ``straw that broke the camel's back``, leading, on a balance of probabilities, to a permanent worsening of the Appellant's condition and function.

Counsel for the Appellant reviewed her testimony and the testimony and reports of her chiropractor, observing that it was clear from the evidence that, at the time of the second accident in 2009, the Appellant's neck health was compromised by a pre-existing C5-C6 degenerative condition, caused by her 1995 motor vehicle accident. Following the 1995 accident, the Appellant always had some level of neck pain, although she managed to maintain full-time employment. The gap in her medical records between December 1997 and April 2001 was a result of giving up hope that treatment would help, and not due to her pain abating. What followed was a pattern of flare-ups, pain and challenges in the workplace. She attributed this, as she noted to [Appellant's chiropractor], to her involvement in the 1995 motor vehicle accident.

Counsel submitted that the combination of the consistent presence of pain in the Appellant's daily life since the 1995 motor vehicle accident and her chiropractor's testimony on how the accident caused her degenerative disc disease to develop served to link this accident to her medical condition. [Appellant's chiropractor's] testimony regarding the unusual location of severe degenerative changes at the cervical level and the mechanism of injury in the 1995 accident served to "connect the dots" of the pattern which the Appellant had established in her testimony and support a finding that the Appellant's degenerative disc disease was causally linked to the 1995 motor vehicle accident.

Counsel submitted that the 2009 motor vehicle accident then enhanced the Appellant's pre-existing condition. The Appellant was dealing with varying but constant levels of pain while working and had maintained full employment in the years leading up to the flare-up of her condition in October of 2009. However, with treatment and rest, the Appellant's condition greatly improved to the point where she was scheduled and ready to return to work on December 29, 2009. Then, following the second motor vehicle accident the Appellant's level of pain increased. Her condition sharply deteriorated. Her chiropractor explained that the Appellant's pre-existing degenerative disc disease had made her fragile and susceptible to injury and the enhancement of her injuries by the second motor vehicle accident created debilitating pain in the workplace.

Counsel noted that the MPIC Internal Review Officer's decision dated March 25, 2013 approved supportive chiropractic care for the Appellant. Since supportive care is rarely recommended in all but the toughest cases of permanent injury, this level of injury occurring in such a low energy collision as the second accident, leaves one to conclude that the second accident had led to an enhancement of her injury.

Counsel for the Appellant was critical of reports from MPIC's Health Care Services consultant which attributed the Appellant's problems to her pre-existing condition and not to either of the motor vehicle accidents. He indicated that the Health Care consultant had failed to provide an explanation for how he reached this opinion and had not elaborated upon this in his testimony before the Commission. In contrast, the Appellant's chiropractor had pointed out various objective impairments in his examination and assessments of the Appellant.

Counsel also referred to a number of decisions from the courts and the Commission regarding the relevance of patients' complaints of pain to their ability to perform physical functions. He described the Appellant's pain as intolerable and submitted that it would certainly prevent her from performing her occupational duties. He submitted that the 1995 motor vehicle accident, on a balance of probabilities, had caused the Appellant's degenerative spine condition. The 2009 motor vehicle accident then enhanced her pre-existing condition and left her in debilitating pain to the extent that she could no longer continue her employment.

Evidence and Submissions for MPIC:

MPIC submitted reports from its Health Care Services consultant, an independent assessment from [independent physical medicine and rehabilitation specialist], an independent chiropractic assessment by [independent chiropractor] and a neurosurgeon, [Appellant's neurosurgeon].

The Health Care Services consultant, [MPIC's doctor], testified at the Appellant's hearing. He was qualified as an expert in motor vehicle accident causation and treatment. He explained his reviews of the medical documentation on the Appellant's file and his corresponding reports. This included reviews of the other specialists' reports, as well as of the Appellant's own chiropractor and family doctors.

It was [MPIC's doctor's] view that medical documentation from the 2009 motor vehicle accident indicated that the Appellant had aggravated a pre-existing condition. However, following recovery and treatment, her symptoms and conditions returned to her pre-2009 accident condition. He was not able to find anything on the Appellant's file, from an objective standpoint, which would indicate that her condition had worsened to the extent that she was no longer able to maintain employment at her sedentary computer job. He did not agree with the

Appellant's chiropractor that she had suffered a myelopathy and permanent impairment of function. There was no evidence of weakness or atrophy, sensory deficit, root compression or loss of function.

[MPIC's doctor] also reviewed MRI reports and focused upon the degenerative changes which were apparent in the Appellant's spine. He did not agree that these changes must be attributed to some traumatic event. He indicated that often such conditions can develop over time and that other factors such as age, lifestyle, smoking etc. often contribute. Although [MPIC's doctor] agreed that pre-existing spinal stenosis might affect the stability and function of the spine and make it more susceptible to injury or aggravation if exposed to further trauma, he could not see how the Appellant's condition would prevent her from working at sedentary employment. Rather, he indicated that in such cases he was supportive of active exercise while cautioning patients to be aware not to compromise nerve function with a lot of sustained neck extension.

[MPIC's doctor] testified that the medical evidence did not show a causal relationship between the Appellant's 1995 motor vehicle accident and her cervical degeneration or stenosis. Nor did the evidence support a causal relationship between the 2009 motor vehicle accident and the degeneration and stenosis, which were quite evident prior to the motor vehicle accident.

Further, a review of the medical documentation on the Appellant's file did not indicate that a permanent impairment had resulted as a result of either motor vehicle accident. After reviewing the reports of [independent physical medicine and rehabilitation specialist], [Appellant's neurosurgeon] and [independent chiropractor], along with other reports on the Appellant's file, he did not find a significant change in her condition that would cause him to believe that she was functionally incapable of performing the duties of her employment after July 2011.

Counsel for MPIC reviewed the history of the Appellant's 1995 accident, her soft tissue injuries and the benefits she received until her file was closed on January 23, 1997. At the time of her 2009 accident the Appellant was not receiving any MPIC benefits as a result of the 1995 accident. However, in November 2009 the Appellant had started a leave from work due to right upper back and arm pain. [Appellant's chiropractor] had noted that no initiating event was reported for this pain and the Appellant did not contact MPIC to say that she was off work or receiving treatment as a result of her 1995 accident.

MPIC accepted that the Appellant was unable to work due to injuries she sustained in the December 2009 accident and IRI was paid. In March 2010 her chiropractor recommended a gradual return to work program but the Appellant was unable to progress.

She was referred for an assessment with a physical medicine and rehabilitation specialist, [independent physical medicine and rehabilitation specialist], who provided a report, dated August 11, 2010. This report reviewed X-rays which showed degenerative disc disease at C5-C6 but indicated that examination of the cervical spine found no swelling, bruising or redness and cervical range of motion was full passively. Sensation testing did not demonstrate a reproducible or consistent dermatomal deficit. He concluded that the Appellant's presentation would be consistent and related to an exacerbation of the right cervical radiculopathy, secondary to the 2009 accident and recommended physiotherapy. Counsel for MPIC submitted that [independent physical medicine and rehabilitation specialist] had not concluded that the Appellant's condition suffered an enhancement.

The Appellant attended physiotherapy, but her status remained unchanged.

She was examined by a neurosurgeon, [Appellant's neurosurgeon], who provided a report dated March 8, 2011. This report noted that the Appellant had very good range of motion of her neck, no weakness or atrophy, no sensory deficits and no signs of cord compression. He did, however, note crowding of her spinal cord at C5-C6 related to chronic disc disease and some ligamentous hypertrophy.

Following the Appellant's indication to her case manager that she intended to retire, [MPIC's doctor] reviewed the medical information on file and provided a report dated April 29, 2011. He concluded that the Appellant had recovered from her accident related injuries and that the documentation indicated that she did not have an impairment of function related to her accident that would prevent her from performing her pre-accident work duties on a full-time basis. He concluded that the medical documentation did not indicate that the 2009 accident had enhanced the Appellant's cervical spine disc disease. This resulted in the case manager writing to the Appellant on July 29, 2011 to terminate her IRI benefits on the basis that there was no ongoing condition related to the accident that prevented her from returning to her employment.

Counsel reviewed [Appellant's chiropractor's] report dated December 1, 2011 which linked her long-standing neck, low back pain and headaches to the motor vehicle accident that took place in 1995. He had concluded that the Appellant was permanently impaired due to cervical degeneration and cervical stenosis and that this was initiated in the 1995 accident, with the condition progressing to a significant level of dysfunction in late 2009. However, counsel submitted that [Appellant's chiropractor] did not see the Appellant until six years after her 1995 accident, had not reviewed any medical documentation from that accident and that his opinion was entirely without medical support and should be given very little weight.

MPIC then conducted an investigation as to whether the Appellant's current neck condition could be related to the accident in 1995.

Counsel relied upon the medical consultant's review of clinic notes and other medical reports in his report dated November 29, 2012. He concluded that a cause and effect relationship could not be established between the 1995 accident and the Appellant's degenerative spine condition. This was supported by his testimony at the appeal hearing. Counsel noted that although [Appellant's chiropractor] was of a different opinion, he had essentially arrived at this conclusion through the patient history taken with his examination and treatment of the Appellant. A third party chiropractic report from [independent chiropractor], dated November 12, 2012 concurred with [independent physical medicine and rehabilitation specialist's] opinion that the Appellant sustained an exacerbation of her pre-existing cervical condition in the 2009 motor vehicle accident, but not an aggravation. [Independent physical medicine and rehabilitation specialist], [Appellant's neurosurgeon] and [independent chiropractor] had all examined and met with the Appellant, yet reached the different conclusion that the Appellant suffered only musculoskeletal strain affecting the neck and shoulders in the accidents and did not indicate that the Appellant sustained a cervical disc lesion or radiculopathy as a result of the accident.

Further, as the medical evidence was clear that the Appellant's cervical spine degenerative disc disease predated the 2009 accident, [MPIC's doctor] and [independent chiropractor] concluded that the 2009 accident, while it exacerbated the Appellant's cervical spine degenerative disc disease for a temporary period, requiring treatment, did not enhance it or make it worse. Counsel submitted that the Commission ought to prefer the evidence of [MPIC's doctor], [independent chiropractor], [Appellant's neurosurgeon] and [independent physical medicine and rehabilitation specialist], whose opinions were based on objective medical evidence. Further, she submitted

that although [Appellant's chiropractor], based upon the Appellant's subjective reports, opined that the Appellant was not able to work, [MPIC's doctor], after reviewing all the medical evidence on the Appellant's file, found no objective evidence of any physical or neurological impairment related to either accident that would prevent the Appellant from working at her pre-accident employer.

Therefore counsel submitted that based upon the objective medical evidence on the Appellant's file the Appellant's appeal should be dismissed.

Discussion:

The MPIC Act provides:

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

110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

- (a) the victim is able to hold the employment that he or she held at the time of the accident;

The onus is on the Appellant to show, on a balance of probabilities, that she is entitled to further IRI and Personal Injury Protection Plan ("PIPP") benefits as a result of injuries caused by her motor vehicle accidents. The Commission has considered whether the Appellant's cervical spine degenerative disc disease was caused by the 1995 motor vehicle accident and whether the 2009 motor vehicle accident enhanced her condition.

The Appellant testified regarding what she described as intolerable pain, particularly in connection with her workplace duties, and this evidence was supported by [Appellant's

chiropractor's] testimony. The Commission does not question the Appellant's subjective experience or view of her pain, or [Appellant's chiropractor's] acceptance of her reports of pain, struggles and challenges in the workplace.

The Commission also finds that the Appellant had a significant degenerative spine condition that pre-existed the 2009 motor vehicle accident.

She sought to establish that the 1995 motor vehicle accident was the cause of her degenerative spine condition. The Appellant relied upon her own evidence, as well as evidence from [Appellant's chiropractor]. However, the Commission notes that [Appellant's chiropractor] did not start treating the Appellant until 2001, and so could only rely upon the Appellant's report to him that her neck pain resulted following the 1995 motor vehicle accident. He did not have the opportunity to do a review of her file in this regard, but rather relied upon her verbal history.

The Commission also notes that no other experts took that position.

MPIC relied upon the evidence of [MPIC's doctor], who reviewed the MRI findings as well as reports from the Appellant's doctors, [Appellant's doctor #1] and [Appellant's doctor #2]. He found no medical evidence to connect the degenerative spine condition to the 1995 accident. After the 1995 accident the Appellant reported cervical symptoms until December 1997. There is an absence of documentation between 1997 and 2001 regarding any effects of the 1995 accident. Symptoms were recorded in November 2009, but when the Appellant began a leave of absence in November 2009 she did not contact MPIC and she was not receiving any PIPP benefits at the time of the 2009 motor vehicle accident. [MPIC's doctor] noted:

“Based on my review of the clinic notes submitted by [Appellant’s doctor #1] and [Appellant’s doctor #2], it is my opinion a cause/effect relationship cannot be established between the December 31, 1995 motor vehicle incident and the June 25, 2010 MRI findings. This opinion is based on the following;

1. Documentation obtained from the file outlining the assessments [the Appellant] underwent prior to and after the December 31, 1995 motor vehicle incident. Of note, cervical symptoms were first identified on January 2, 1996 along with left shoulder symptoms and back pain. The clinic notes indicate [the Appellant] continued to report symptoms involving the left shoulder and to some extent the cervical spine until December 1997. Following this, there is no documentation of cervical symptomatology or clinical findings suggestive of a cervical radiculopathy until November of 2009. It is documented that on November 6, 2009, [the Appellant] reported tingling in the right arm as well as neck spasm after walking;
2. The absence of documentation indicating [the Appellant’s] clinical presentation shortly after the incident in question was in keeping with a cervical disc lesion and/or radiculopathy (clinical findings more in keeping with a musculotendinous strain affecting the neck and left shoulder);
3. The understanding that degenerative changes can develop in the cervical spine in the absence of a single traumatic event;
4. The absence of any documentation indicating problems with [the Appellant’s] cervical spine between July 1996 and November 2009 (in other words a temporal relationship cannot be established as well).

The panel agrees with [MPIC’s doctor] that the evidence regarding clinical findings after the 1995 accident was in keeping with a musculotendinous strain of the neck and shoulders, rather than a cervical disc lesion or radiculopathy. Degenerative changes such as those suffered by the Appellant can occur in the absence of a traumatic event, and the Appellant has not presented sufficient evidence to establish a causal connection between this degeneration and the 1995 accident.

Accordingly, the panel finds that the Appellant has failed to meet the onus upon her of showing, on a balance of probabilities, that her pre-existing degenerative cervical spine condition was caused by her 1995 motor vehicle accident.

The panel also finds that the Appellant has failed to meet the onus upon her of showing, on a balance of probabilities, that the 2009 motor vehicle accident resulted in an enhancement of her pre-existing degenerative condition.

Although [Appellant's chiropractor's] evidence described the 2009 motor vehicle accident as a significant game changer that prevented the Appellant from returning to her employment, no other expert took the position that the Appellant could not work.

Evidence from [independent physical medicine and rehabilitation specialist], [Appellant's neurosurgeon], [independent chiropractor] and [Appellant's physical medicine specialist] (who also examined the Appellant) did not establish a lasting change or permanent enhancement of the Appellant's condition following the December 2009 motor vehicle accident. Nor did they recommend that she cease activities. Rather, [independent physical medicine and rehabilitation specialist], [independent chiropractor] and [Appellant's physical medicine specialist] all encouraged her to participate in exercise, physiotherapy and physical activity.

As [independent physical medicine and rehabilitation specialist] noted in his report of August 11, 2010:

“It appears on the basis of the medical information available, most probable that [the Appellant] had a presentation consistent with a right cervical radiculopathy prior to the MVA in question and as a result of her November 2009 incident. By [the Appellant's] account, this appeared to improve and [the Appellant] was scheduled to return to her workplace as of December 29, 2009. It appears that [the Appellant's] condition was exacerbated as a result of the noted MVA of December 21, 2009. Insofar as the temporal relationship and the current objective findings of a symptomatic cervical radiculopathy, it appears that [the Appellant's] current presentation would be consistent and related to an exacerbation (sic) of the right cervical radiculopathy secondary to the December 29, 2009 MVA. ...

At this time, the recommended course of treatment would include an aggressive, active, function based physiotherapy program focused on function restoration... to begin a

gradual return to work program increasing her current hours per day of work by 2 hrs/day every 2 weeks until full hours. ...

At this time there appears to be no indication of enhancement of pre-existing conditions. As such, there would be no indication of permanent impairment.”

[Independent chiropractor] made similar findings in his report dated November 12, 2012, agreeing with [independent physical medicine and rehabilitation specialist] that:

“... her pre-existing condition was exacerbated by the motor vehicle accident of December 21, 2009. I would concur with this statement that she sustained an exacerbation as opposed to an aggravation. According to the AMA Guides to the Evaluation of Permanent Impairment, 4th edition, aggravation implies a permanent worsening of the original condition in such a way that the degree of permanent impairment increased by more than 3%.”

[Independent chiropractor] indicated the Appellant would benefit by doing more in the way of active exercises. He noted:

“She is retired and not on disability. It is my understanding that she is not restricted with her activities of daily living. Any permanent impairment relates to her pre-existing condition.”

[Appellant’s physical medicine specialist], physical medicine specialist, reported on March 25, 2014. She found that the Appellant’s neck pain was mechanical in nature with no evidence of radiculopathy or myelopathy identified. She recommended treatment modalities which the Appellant finds beneficial as well as daily neck and shoulder blade stretching with regular core stabilization exercises.

MPIC’s Health Care Services consultant reviewed all of this information in a report dated April 29, 2011 and in his testimony before the panel:

“At the present time, the file does not contain documentation indicating [the Appellant] has been noted to have objective evidence of a physical impairment of function arising from the incident in question that would prevent her from performing her pre-accident work duties on a full-time basis if she so desired.

The file does not contain documentation indicating [the Appellant's] pre-existing cervical disc disease was enhanced by the incident in question.”

The panel finds that the Appellant suffered a temporary exacerbation of her pre-existing severe degenerative disc disease in the motor vehicle accident in 2009. We accept the Appellant's position that this degenerative condition had left her in an increasingly fragile or vulnerable state. However, that condition was treated with chiropractic care and the Appellant was in receipt of benefits, including IRI, for a lengthy period following the December 2009 motor vehicle accident. By July 2011, the Appellant was really in the same state, in terms of objective findings, as she was in prior to the December 2009 motor vehicle accident. The Appellant has failed to show, on a balance of probabilities, that there was a lasting enhancement of her condition caused by that motor vehicle accident. Any difficulty the Appellant may have had in returning to work after that time was more likely due to her pre-existing degenerative condition, which was not caused by the 1995 motor vehicle accident and not caused by or permanently enhanced by the 2009 motor vehicle accident.

Accordingly, the Internal Review Decisions of January 20, 2012 and March 25, 2013 are upheld by the Commission and the Appellant's appeals are dismissed.

Dated at Winnipeg this 23rd day of July, 2015.

LAURA DIAMOND

JANET FROHLICH

HEATHER MITCHELL