Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-16-044

PANEL:	**Ms Nikki Kagan, Chairperson** **Ms Janet Frohlich** **Mr. Paul Taillefer**
APPEARANCES: **(by written submission)**	**The Appellant, [text deleted], was self-represented;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Ashley Korsunsky.**
HEARING DATE:	**January 25, 2019**
ISSUE(S):	**Whether the Appellant's entitlement to Personal Care Assistance benefits was properly denied and terminated pursuant to Section 160 of the MPIC Act;** **Whether the Appellant is entitled to Personal Injury Protection Plan (PIPP) benefits after December 14, 2015 as a result of injuries she sustained in the motor vehicle accident of October 27, 2015.**
RELEVANT SECTIONS:	**Sections 70(1), 71(1), 131(1) and 160 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Sections 1, 2(1), 2(2) and 2(3) of Manitoba Regulation 40/94.**

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

Background:

The Appellant, [text deleted], was a driver of a vehicle involved in a motor vehicle accident (MVA) on October 27, 2015 when she was struck from behind by another vehicle. The Appellant sought coverage under Personal Injury Protection Plan (PIPP) for treatment including

Personal Care Assistance (PCA) benefits, chiropractic treatment, travel, medication expenses and permanent impairment benefits.

By decision letter of the case manager dated December 14, 2015, the Appellant was advised:

> **Personal Care Assistance (PCA)**
> You have been requesting financial reimbursement to hire assistance in the home with preparing meals, doing laundry and cleaning and obtaining groceries and supplies. However, despite MPI having 2 different Occupational Therapists attempt to meet with you to complete a PCA assessment, you were unwillingly/unable to agree to meet with them between November 5, 2015 and December 11, 2015 despite MPI encouraging you to meet with the OT for an assessment.
>
> As we advised you previously, in order to accurately assess your need for PCA, Manitoba Public Insurance must be provided a reasonable opportunity to assess your needs in the acute stage of your injury and to follow up with the necessary monthly re-evaluations to ascertain any changes to your needs and/or adjust your monthly entitlement, accordingly. As we have not been able to assess your needs for PCA, there is no entitlement to any PCA benefits at all, in relation to this claim, as per Section 160 of the MPIC Act (copy attached).
>
> **No further PIPP Coverage for this Injury Claim:**
> Furthermore, as discussed in our telephone conversation on December 14, 2015, our investigation into the loss circumstances of your injury of 27/10/2015 has been completed. Based on the information we have on file, we have been unable to confirm that your injuries/symptoms were sustained as a result of a motor vehicle accident.
>
> On October 27, 2015, you were turning right to merge onto [street] and slowed to a stop and your vehicle was struck from the rear, by another vehicle that slid into you. The other vehicle sustained no damage as a result of this incident. Your vehicle sustained minor damage to the rear bumper.
>
> MPI asked you to sign and date and return authorization forms so we could obtain the hospital reports. To date you have not completed and returned the requested paperwork. You indicated that you went to the [hospital #1] the same day of the accident, and to [hospital #2] the next day for the CT scans. Despite our reminder for you to sign and return the authorization forms you have declined to do so.
>
> MPI asked for you to complete and return an authorization form so we could obtain a report from your family physician, and you advised that you would not and that your doctor will not complete MPI paperwork anyway.
>
> Our Health Care Services have therefore reviewed the information on file to date (see attached review dated December 10, 2015) along with vehicle damages and

> they indicate that they are unable to confirm any compensable injuries that would have resulted from this accident.
>
> As we are unable to confirm that your injuries were a result of a motor vehicle accident, there is **no entitlement to further PIPP benefits after December 14, 2015, including treatment, travel or medication expenses.**

The Appellant filed an Application for Review of the case manager's decision. The decision was considered by the Internal Review Officer (IRO) at the internal review hearing that took place on February 25, 2016. The Appellant attended by telephone.

The Internal Review Decision dated March 18, 2016 provided as follows:

> **ISSUE**
>
> 1. Is the decision to deny and terminate your entitlement to Personal Care Assistance ("PCA") benefits pursuant to Section 160 of *the Manitoba Public Insurance Corporation Act* supported by the file information?
>
> 2. Does the totality of file information support the decision to deny Personal Injury Protection Plan ("PIPP") benefits after December 14, 2015, on the basis that you did not sustain a compensable injury as a result of the accident?
>
> **REVIEW DECISION**
>
> 1. The decision to deny and terminate your entitlement to PCA benefits is supported by the file information.
>
> 2. The decision to deny PIPP benefits after December 14, 2015 is supported. This includes coverage for treatment, travel and medication expenses.

In respect to coverage for PCA, the IRO stated:

> Regarding the PCA matter, the case manager arranged for two separate occupational therapists to complete the assessment to determine your qualification to said benefits. In numerous correspondence and conversations, the case manager clearly stated that you would not be entitled to PCA benefits until the assessment took place. This is contrary to your comments that the case manager was going to reimburse you for the 36 hours your daughter provided you with assistance for cooking, cleaning and driving you to get groceries (as per page 2, point 3 in your letter attached with the Application for Review).

In your letter of March 1, 2016 under point 8, sub (6), you stated that the first occupational therapist cancelled and the second occupation therapist "*needed an answer on that day*".

As indicated under "**Facts**", the first occupational therapist ([text deleted]) arranged for the assessment on or before November 19, 2015 (assessment scheduled for 10:00 a.m. on November 25). When reviewing the contents of [occupational therapist #1's] November 20, 2015 e-mail, it would appear that you made it very difficult for him to confirm the appointment as scheduled. As you were unable to confirm the appointment despite numerous attempts, [occupational therapist #1] cancelled same.

You indicated that the second occupational therapist ([text deleted]) "*needed an answer on that day*" (December 11). Upon reviewing the file, I note that you contacted your case manager on December 7, 2015, advising that you were unable to find a witness to attend your PCA assessment, implying that a date and time had already been arranged. As noted under "**Facts**", [occupational therapist #2] indicated that he phoned you a few times and offered you a couple of dates for the assessment. [Occupational therapist #2] booked the assessment for December 11 at 3:00 p.m. [Occupational therapist #2] indicated that he spoke with you on December 10 and you were given to the end of the day to confirm the assessment which you ultimately cancelled.

In Application for Compensation you signed on November 19, 2015, point 5 reads as follows:

I understand that if I withhold information, refuse to provide information, refuse to attend for treatment, or do anything to interfere with or delay my recovery, or that I fail to cooperate with reasonable rehabilitation plans or requests for a medical assessment, that Manitoba Public Insurance may reduce, suspend or terminate payment of any compensation.

Based on my review of the documentation from the occupational therapists, I concur with the case manager that the termination of PCA benefits as a result of your actions is supported by legislation. This is further supported by the interpretation of point 5 in the Application for Compensation you signed, as you failed to cooperate with the occupational therapist(s) and your case manager in proceeding with the PCA assessment. I am confirming that you are not entitled to PCA benefits pursuant to Section 160 of the *Act*.

With respect to coverage for PIPP benefits after December 14, 2015, the IRO stated:

Regarding additional medical information in support of your claim, you forwarded a "corrected" [hospital #1] Emergency Report. You indicated this report will support the numerous injuries you sustained a (sic) resulted from the accident.

> You said that you were awaiting a corrected [hospital #2] report. You attended [hospital #2] on February 3, 2015, because of your right rib pain along with the remainder of your complaints.
>
> In summary, you wanted to list your injuries from the accident as follows:
>
> - Concussion – hit head on headrest.
> - Right hand numbness.
> - Radial side left hand numbness.
> - Whiplash severe, severe neck and head pain.
> - Right face numbness – aggravated/exacerbated from 2013 accident.
> - Right rib pain.
> - Aggravated back pain.
>
> Several times during the hearing you requested resumption of your chiropractic treatment coverage. You also requested taxi transportation as you are unable to drive. You want reimbursement for the medications you have purchased for which the case manager is no longer covering. You also want to be reimbursed for PCA so that you can pay your daughter for the 36 and 100+ hours of care she provided. You indicated that you have a friend helping you with almost all activities of daily living including meal preparation, house cleaning, taking you to the bank, picking up your prescriptions etc.
>
> I referred this matter back for a review by a medical consultant with MPI's Health Care Services. I asked if the new information ([hospital #1] report) would change the prior opinion that there was insufficient evidence to support your having sustained a compensable injury as a result of the accident. Please find enclosed a copy of the medical consultant's March 15, 2016 review for your perusal.
>
> Having reviewed the medical information, I concur with the medical consultant that the available medical information and the mechanics of this accident does not support your widespread reporting of pain and symptoms. The whiplash diagnosis would not be consistent with the numerous symptoms you have reported. Further, I find that your reported inability to perform almost all activities of daily living is not consistent with a low speed minimal damage vehicle accident.

The Appellant disagreed with the decision of the IRO and filed this appeal with the Commission.

Issues:

The issues which require determination of this appeal are as follows:

1. Whether the Appellant's entitlement to PCA benefits was properly denied and terminated pursuant to Section 160 of the MPIC Act;

2. Whether the Appellant is entitled to PIPP benefits after December 14, 2015 as a result of injuries she sustained in the motor vehicle accident of October 27, 2015.

Decision:

For the reasons set out below, the panel finds as follows:

1. The Appellant refused or neglected to take part in a PCA assessment without a valid reason and therefore the Appellant's entitlement to PCA benefits were properly denied pursuant to section 160 of the MPIC Act.
2. The Appellant has not met the onus of establishing that, on a balance of probabilities, her current injuries are caused by the MVA of October 27, 2015 and therefore the Appellant is not entitled to PIPP benefits after December 14, 2015.

Appeal Hearing:

The Appellant requested that the appeal proceed by written submissions. The Appellant filed a written submission on May 3, 2018 and MPIC provided a written submission on May 10, 2018. The Appellant sought the opportunity to provide a reply to MPIC's written submission. The Commission agreed to allow the Appellant the opportunity to file a reply providing the reply was restricted to responding only to new matters that were raised by MPIC in its written submission of May 10, 2018. Following further correspondence from the parties, the matter was scheduled to be considered by a panel of the Commission, which convened on January 25, 2019.

Issue One

Whether the Appellant's entitlement to PCA benefits was properly denied and terminated pursuant to Section 160 of the Act.

The relevant provisions of the MPIC Act are as follows:

> **Reimbursement of personal assistance expenses**
> 131(1) Subject to the regulations, the corporation shall reimburse a victim for expenses of not more than $3,000 per month relating to personal home assistance where the victim is unable because of the accident to care for himself or herself or to perform the essential activities of everyday life without assistance.
>
> **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 (b) refuses or neglects to produce information, or to provide authorization to obtain the information, when requested by the corporation in writing;

The relevant provisions of Regulation 40/94 are as follows:

> **Reimbursement is subject to Schedules**
>
> **1** An expense that the corporation is required under this regulation to reimburse is subject to a determination by the corporation of the amount payable in accordance with the Act, regulations under the Act, and the Schedules to this regulation.
>
> **Definition**
> **2(1)** In this section, **"personal care assistance"** means assistance with an activity where
> (a) the activity is described in Schedule C and, in accordance with that Schedule,
> (i) it applies to the victim,
> (ii) it is appropriate for the victim's age, and
> (iii) the victim had the capacity to perform it at the time of the accident; and
> (b) the assistance
> (i) is provided directly to and solely for the benefit of a victim, and
> (ii) has been evaluated in accordance with Schedule D. (« aide personnelle »)
>
> **Interpretation — section 131 of Act**
> **2(2)** For the purposes of section 131 of the Act, qualifying personal care assistance is personal home assistance.
>
> **Reimbursement for personal care assistance under Schedules C and D**
> **2(3)** Subject to the maximum amount set under section 131 of the Act, the corporation shall reimburse a victim for the actual and proven expenses of personal care assistance in accordance with Schedules C and D if
> (a) the personal care assistance meets the minimum score prescribed in Schedule D;

> (b) the personal care assistance expenses are the direct result of the victim's bodily injury caused by an automobile for which compensation is provided under Part 2 of the Act; and
> (c) the personal care assistance expenses are not covered under *The Health Services Insurance Act* or any other Act.

Evidence and Submission of the Appellant:

The Appellant provided an initial written submission consisting of 109 handwritten pages and 47 attachments. Additionally, the Appellant provided a reply written submission consisting of 21 handwritten pages and 50 attachments. The reply submission was not limited to responding to new matters that were raised in the submission of MPIC.

Both of the Appellant's handwritten submissions were repetitive, at times difficult to follow, and contained irrelevant material. It was difficult for the panel to comprehend the Appellant's argument and review the evidence the Appellant was referencing in support of her argument.

The Appellant claimed that she had:

> … permanent and severe head concussion and neck pain, facial and right arm numbness from March 20, 2013 car accident, cognitive disorder, and from October 27, 2015 car accident, head injury (concussion) and whiplash and right rib pain, right and left hand numbness, left jaw pain and have permanent, severe damage to my body. I claim $250,000.00 permanent impairment and $750,000.00 from MPI for not following all my doctor's diagnosis on file and permanent impairment for permanent injuries as I cannot drive, sleep, cook and need ongoing physical help and meals that friends at their convenience have sometimes been providing.

The Appellant also claimed ongoing chiropractic care and transportation.

The Appellant stated:

> … the 2 OT's cancelled out as I could not find a friend on their schedule, to be present at my place as I did not want to be home alone with a stranger.

The Appellant further stated:

> … it is not correct that I cancelled out on the OT's.
>
> … I told them No, OT, as I would be comfortable with a friend's help or have a witness present.
>
> … It is not true that MPI told [text deleted] (OT), that my daughter would attend as she is in school. It is true that I said my friend, [text deleted] may attend but needed to check his schedule first and I could not confirm the appointment as I could not get a hold of my friend so [occupational therapist #1] cancelled, I did not.
>
> It is not true that MPI said my daughter was busy as I would not ask her as I knew she was in school.
>
> In response to [occupational therapist #1], OT, he cancelled the appointment and would not wait I [the Appellant], did not cancel as I told MPI and OT I needed a friend here for my safety… I told him I would be more comfortable with a friend helping me - someone I knew.

Evidence and Submission of MPIC:

On November 4, 2015, in a conversation with her case manager, the Appellant requested PCA benefits due to numbness in her right hand and her sore neck and back. The case manager explained to the Appellant that in order to determine if she qualified for PCA benefits, a PCA assessment must be completed by an occupational therapist (OT) in the Appellant's home. The Appellant stated that she was unsure if she would agree to the assessment because she does not like to have strangers in her home. The case manager suggested that she could have her daughter or a friend present at the assessment.

On November 5, 2015, the Appellant advised the case manager that she did not want an occupational therapist to come to her home.

The case manager advised the Appellant by letter dated November 5, 2015 that an assessment is mandatory in order to determine if the Appellant qualified for an entitlement to PCA expenses.

The letter explained that a score is applied based on the Appellant's personal care requirements and a minimum score of "9" is required.

The case manager's letter stated that the Appellant must contact MPIC by November 13, 2015 if she would like to have the assessment completed. The letter further advised that without the assessment MPIC, would not fund the PCA.

The Appellant agreed to a tentative appointment set for November 25, 2015 with [text deleted], OT and indicated that her daughter would attend as a witness.

In a file note dated November 19, 2015, the case manager documented a telephone conversation she had with the Appellant during which the Appellant advised she was unsure if the PCA assessment for November 25, 2015 would take place because her friend and daughter were busy. The case manager offered to attend as a witness but the Appellant replied that she would let her know if she was needed after she confirmed if her friend or daughter were available.

On November 20, 2015 [occupational therapist #1] emailed the case manager advising that he spoke with the Appellant and the Appellant had cancelled the appointment for the PCA assessment on November 25, 2015. [Occupational therapist #1's] email detailed his multiple attempts to schedule a time for the Appellant's PCA assessment and the Appellant refused to commit to an appointment time.

In a letter dated November 24, 2015 the Appellant was advised that if the PCA assessment was not completed by December 11, 2015, the Appellant's PCA benefits may be denied as MPIC had not been afforded a reasonable opportunity to assess her needs.

On December 9, 2015 the case manager spoke with an alternate OT, [occupational therapist #2], to determine if the Appellant had scheduled her PCA assessment. [Occupational therapist #2] stated that he had phoned her a few times and "she seems to be very busy for someone who is not able to do their own PCA". [Occupational therapist #2] advised the case manager that he offered a couple of dates to the Appellant and tentatively booked December 11, 2015 at 3:00 p.m. The case manager documented a call she received from [occupational therapist #2] on December 10, 2015 during which he indicated that he gave the Appellant until 4:30 p.m. that day to let him know if she wanted to meet for the PCA assessment the following day. [Occupational therapist #2] later advised that the appointment was cancelled.

MPIC submitted that the Appellant bears the onus to establish, on a balance of probabilities, that the IRO was incorrect in concluding that the Appellant is not entitled to PCA benefits.

MPIC argued that there is no legislative authority for MPIC to reimburse PCA expenses without the PCA assessment being completed, and a minimum score of "9" is required.

The Appellant failed to establish that her PCA needs met the minimum score of "9" as prescribed by Schedule D because she refused or neglected to undergo a PCA assessment. Accordingly, there is no score available to determine or support her entitlement.

As the Appellant failed to cooperate on multiple occasions when two different occupational therapists tried to arrange a PCA assessment, MPIC submitted that the Appellant's actions constitute refusing or neglecting to produce information in order for MPIC to assess her entitlement to PCA benefits. Therefore, these benefits were properly denied pursuant to Section 160 of the Act.

For the above reason MPIC submits that the IRO's decision should be upheld and the appeal should be dismissed.

Discussion

To qualify for PCA benefits the Appellant must be assessed by an occupational therapist and determined to have a minimum score of "9".

The evidence is undisputed that the PCA assessment was not completed. However, for MPIC to refuse benefits, we must consider Section 160 of the Act wherein it is stated:

> **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
>
> > (b) refuses or neglects to produce information, or to provide authorization to obtain the information, when requested by the corporation in writing …

The panel has reviewed the evidence and finds that MPIC advised the Appellant on several occasions in writing and by telephone that to qualify for PCA benefits a PCA assessment was necessary. In particular, the Appellant was advised by written correspondence from the case manager on November 5, 2015, November 13, 2015 and November 24, 2015.

The file contains detailed memos noted by the case manager reiterating telephone conversations between the case manager and the Appellant. These memos confirm that the Appellant was notified that to qualify for PCA benefits, she must be assessed by an OT.

The file also contains memos prepared by [MPIC's case manager] referencing telephone calls that she had with 2 occupational therapists, [text deleted] and [text deleted]. These memos are detailed with respect to date and time. These memos support the finding that the Appellant was uncooperative and would not commit to a specific date for the assessment to take place. The panel has no reason to doubt the accuracy of these memos.

The Appellant was given the opportunity to meet with two different occupational therapists. The Appellant was advised by telephone and in writing that she would be denied benefits if she did not cooperate with the assessment by a certain date.

The accident occurred on October 27, 2015. The Appellant was advised that she had until December 11, 2015 to meet with the OT, and she failed to do so.

The Appellant provides various reasons explaining why the OT assessment did not take place. The Appellant submits that she made sufficient effort to schedule an appointment with the occupational therapist and it was the fault of the occupational therapist that the appointment did not take place.

The panel finds that the Appellant's explanations and excuses are not sufficient to rebut a finding that the Appellant refused or neglected to produce information.

The panel finds that PCA assessment did not take place due to the Appellant's failure to cooperate and therefore the Appellant's PCA benefits were properly denied.

Issue Two

Whether the Appellant is entitled to PIPP benefits after December 14, 2015 as a result of injuries she sustained in the motor vehicle accident of October 27, 2015.

The relevant provisions of the MPIC Act are as follows:

> **Definitions**
>
> 70(1) In this Part,
>
> **"accident"** means any event in which bodily injury is caused by an automobile; (« accident »)
>
> **"bodily injury"** means any physical or mental injury, including permanent physical or mental impairment and death; (« dommage corporel »)
>
> **"bodily injury caused by an automobile"** means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused
>
> (a) by the autonomous act of an animal that is part of the load, or
>
> (b) because of an action
>
> **Application of Part 2**
>
> 71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

Evidence and Submission of the Appellant:

The Appellant's submission stated:

> [MPIC's case manager] of MPI errored (sic) for the Oct. 27 car accident injury information - see application for compensation attached as # 28, not yet corrected, on file to written submission of Aug. 21, 2017, for clarification and errors - attached as 28, tab 85. My doctor's diagnosis and recommendations not followed by MPI for March 20, 2013 car accident injuries and Oct. 27, 2015 car accident injuries and diagnosis, and Nov. 18, 2017 car accident injury with new neck sprain diagnosis on both sides of neck, and low back pain injury. See attached # 48, # 50 and # 51 for Nov. 18, 2017 new injury diagnosis.
>
> [MPIC's case manager] of MPI and Dr's of MPI paid for a soft collar and taxi transportation and only 13 chiropractic visits and taxi for the Oct. 27, 2015 car accident, and soft collar and 1 set of medications needed for pain and then I was cut

> off for no legitimate reason. I am entitled to 42 ongoing chiropractic treatments needed per [Appellant's chiropractor #1], current chiropractor, and I was reconsidered ongoing chiropractic care for the March 20, 2013 car accident by [Appellant's chiropractor #1], see his letter attached as # 14 - after the March 20, 2013 car accident, under prognosis - page 2 "that I am at maximum medical improvement and will require ongoing palliative care." [The Appellant] demonstrates all the hallmarks of post-concussion syndrome and requires ongoing care as she has reached MMI.
>
> [Appellant's family doctor] also supports ongoing chiropractic care, see his attached note of June 3, 2015 #8. MPI's Dr's did not follow my current chiropractor's recommendations of ongoing chiropractic care and also [Appellant's family doctor's] diagnosis and recommendations for ongoing chiropractic care needed after the March 20, 2013 concussion injury. MPI did not follow [Appellant's neurologist's] (neurologist's diagnosis), and my previous chiropractor's diagnosis, see [Appellant's neurologist's] letter attached as # 5, paragraph 7. See [Appellant's chiropractor #2's] letter of Oct. 30, 2015, attached as # 22, and [Appellant's chiropractor #3] letter of Jan. 13, 2014, # 13 - that chiropractic care shows improvement.
>
> I claim full compensation and permanent impairment taxi transportation, a maid, a cook, for medications, see RX history, attached as #20 in this third written submission of February 25, 2018. I ask MPI for reimbursement of medications since 2010.

The Appellant stated in her Notice of Appeal that her injuries included:

> … whiplash in which I had to wear a soft collar in a vehicle and for sleeping, head pain, as I hit my head on the headrest. I also had right and left hand numbness and right arm numbness, mid to low back pain, right rib pain.
>
> …
>
> Also Appealing Permanent Impairment for injuries after Oct. 27, 2015 hit and run car accident and Compensation from MPI as I have sufficient diagnosis letters from 2 chiropractors and Hospital reports.

Evidence and Submission of MPIC:

On the evening of the accident at approximately 9:20 p.m. the Appellant presented at the emergency department of the [hospital #1] complaining of a headache, dizziness, bilateral neck discomfort and right hand numbness. The Appellant denied sustaining a loss of consciousness in

the MVA and confirmed that she was seat belted and ambulatory at the scene. The Appellant also reported having pre-existing chronic head and neck pain.

The following day the Appellant attended to her chiropractor, [Appellant's chiropractor #2], who completed a Primary Health Care Report listing the Appellant's widespread complaints and providing a diagnosis of whiplash and concussion injuries.

On October 29, 2015, the Appellant attended at the emergency department of the [hospital #2] referencing the MVA and complaining of right arm numbness and neck pain. The Appellant underwent a CT scan which confirmed there were no fractures, dislocations, or any evidence of disc herniation, spinal stenosis or nerve root compression. The Appellant's diagnosis at discharge was "no acute bony injury". The Appellant later requested an addendum to the medical record to include the diagnosis of "muscular strain, possible concussion".

The Appellant submitted an Application for Compensation dated November 19, 2015. In the Application she listed her injuries as sore neck, sore back, concussion, lost consciousness, whiplash, chest pain and right arm numbness. Further, she indicated on the Application that all of her listed conditions are pre-existing and aggravated as a result of the MVA.

The case manager requested a Health Care Services chiropractor consultant review. The Appellant did not sign and return the authorization form for MPIC to obtain hospital records. Without the hospital records the consultant opines that based on the lack of verifiable injury, the current file contents do not support that chiropractic care is required as a result of the MVA in question.

The case manager's decision issued on December 14, 2015 denied further entitlement to PIPP benefits on the basis that MPIC had been unable to confirm that the Appellant's injuries or symptoms were sustained as a result of the MVA.

Following this decision, the Appellant provided an emergency nursing report from [hospital #1] which was amended as indicated above. There was also an amendment to the note in relation to pre-existing conditions to include concussion injuries, facial and right arm numbness, in addition to the pre-existing chronic pain to the head and neck. The Health Care Services medical review dated March 15, 2016 provided the opinion that it cannot be concluded from the limited information presented on file that the Appellant's condition stems from the MVA on a probable basis.

Subsequent to the issue of the Internal Review Decision, [text deleted], the Appellant's chiropractor, submitted his charts. The charts indicated that the Appellant first entered his clinic 11 days prior to the accident in question complaining of pain throughout her entire body. [Appellant's chiropractor #2] stated that the exam was difficult to perform because the Appellant appeared to be in too much pain preventing him from performing testing.

[Appellant's chiropractor #2] provided treatment on October 20, 2015 and October 26, 2015.

The Appellant provided a report by [Appellant's chiropractor #1] dated July 10, 2015. Health Care Services reviewed this report and determined that the Appellant's symptoms are primarily physical and would not be explained by a concussion. A Health Care Services chiropractor consultant review dated April 20, 2017 states that given the mechanism of the injury, it is improbable that the very broad list of complaints described in the initial chiropractic report are

related to the MVA in question. Further, a clear picture regarding the possible injuries sustained by the Appellant is obfuscated by widespread and improbably related complaints. With this in mind, although it is possible that the Appellant had a time-limited aggravation of her previous complaints, the file contents do not clearly describe new injuries (including concussion) as being probably related to the collision in question.

Lastly, a Health Care Services medical consultant review was completed on February 1, 2018 in which the medical consultant conducted a forensic review of the indexed file and provided an opinion on whether the Appellant sustained a compensable injury as a report of the MVA. The medical consultant notes that he cannot conclude that the new conditions occurred directly as a result of the MVA on a balance of probabilities.

With respect to the question of whether the MVA resulted in aggravation of the Appellant's pre-existing conditions, he states:

> This reviewer also cannot determine that, on a balance of probability, an aggravation of the reported pre-existing complaints or conditions occurred following the motor vehicle collision. Only by report from [the Appellant] was there a potential exacerbation in symptomology. However, this cannot be confirmed independently by review of the medical reporting obtained immediately following the motor vehicle collision and specifically in the reports from [Appellant's chiropractor #2] who had near immediate pre and post-collision knowledge of [the Appellant]'s medical conditions. For these reasons, this reviewer cannot conclude that an exacerbation or aggravation of pre-existing symptoms / conditions occurred following the motor vehicle collision…

MPIC submitted that in determining causation, the Health Care Services medical consultant, used a systematic approach. Specifically, he conducted a medical accounting of all the information on file to arrive at the conclusion regarding the probable cause and effect relationship. As such, MPIC submitted that the opinion of the Health Care Services medical consultant should be accepted over that of the Appellant's treatment providers.

MPIC further submitted that [Appellant's chiropractor #1's] opinion should not be accepted because [Appellant's chiropractor #1] chose to step beyond the role of a healthcare provider and into the advocate role at the 1 ½ hour case conference hearing that he attended.

MPIC submits that there is no probable direct injury that occurred as a result of the MVA and further there is no probable aggravation of the Appellant's pre-existing symptoms or conditions as a result of the MVA.

For these reasons, MPIC submits that the Internal Review Decision should be upheld and the appeal dismissed.

Discussion:

The panel has carefully reviewed all of the medical reports on file. Several reports are referenced within this decision.

The hospital reports do not reference objective testing to support the Appellant's complaints. The Appellant attended the [hospital #2] on October 29, 2015, which was 2 days following the MVA. The report states that the Appellant "was going to be held overnight for advanced imaging but wanted to go home and left".

A CT scan dated 29 October, 2015 referred to:

> … tiny central disc herniation without spinal stenosis or nerve root compression.
>
> There is no other evidence of disc herniation, spinal stenosis or nerve root compression at any of the other imaged levels. No other significant cervical spinal abnormality is identified.

Numerous medical reports referred to by the Appellant to support her claim pre-date the accident in question. The Appellant herself submitted that "[Appellant's chiropractor #2] saw me prior to the October 27, 2015 car accident, and he diagnosed me with Post - Concussion Syndrome."

[Appellant's chiropractor #2] provided several chart notes referencing the Appellant's symptoms. Of significance are the appointments that the Appellant had with [Appellant's chiropractor #2] in the week prior to the MVA:

> Oct 20, 2015 - Neck pain and upper back pain, still has numbness in face.
>
> Oct 26, 2015 - Increased myofascial pain throughout, increased pain in low back and neck due to sitting 2 hours at a movie.

The chart notes continue to set out other complaints of the Appellant however these complaints are largely based upon self reporting and not objective testing. These chart notes raised the question of whether the Appellant had increased pain from sitting in a movie or increased pain as a result of the MVA.

The panel reviewed the medical reports following the Appellant's attendance at the [hospital #1] on October 27, 2015 and the [hospital #2] on October 29, 2015. There is no objective evidence of concussion symptoms immediately following the accident.

The Opiod Medication Review dated December 31, 2015 states that the "Claimant was taking T2's on an ongoing basis prior to this accident for pain and to help her sleep she indicated."

The evidence of [Appellant's chiropractor #1] stated that the Appellant was suffering from virtually the same conditions prior to the accident as she did following the accident. [Appellant's

chiropractor #1's] evidence is considered cautiously given the adversary role that he assumed at the case conference of May 9, 2017.

The Appellant complained of rib pain since the accident however the X-ray report from [hospital #2] dated February 4, 2016 confirmed "No rib fractures are demonstrated."

The Appellant complained of blurred vision. The evidence does not support a finding of blurred vision. All vision tests performed were normal. There is no medical evidence in the file to support a finding of vision problems.

The report of [text deleted], neurologist, dated June 9, 2018 stated:

> Thank you for requesting Neurology consultation… This is a 55 year-old right-handed woman, who is referred for post-concussion. She has had several car accidents in January 8th, 2010, September 30th 2012, March 20th 2013 and October 27th, 2015, November 29th, 2016, November 18th, 2017. On November 18th, 2017, she was in her friend's car and had to slam on the break and developed neck and low back pain since this accident. She has been going to chiropractor treatment. She is very vague in describing her symptoms and all over the place.
>
> …
>
> **Previous Work up:**
> Exam date: 29 Nov 2016
> **CT brain and cervical spine**
> No cervical spine fracture or dislocation is identified.
> At the C3-C4 level, there is a small central disc herniation without spinal stenosis or nerve root compression.
> No other cervical spinal abnormality is identified.
>
> **IMPRESSION:**
> - Some of her symptoms are likely due to accident such as neck and back pain, occipital nerve tenderness, anxiety and memory problems.
> - The visual symptoms are likely visual aura that might have been caused by the accident.
> - I cannot explain the constant numbness of the R side of the face and arm, given the unremarkable C-spine MRI, likely non-neurologic.

[Neurologist] stated that some of her symptoms are "likely" due to the accident however, he does not specify which accident. It appears that he was consulted following the November 2017 accident. This evidence is insufficient to satisfy the onus that, on a balance of probabilities, the Appellant's injuries are caused by the MVA of October 27, 2015.

The panel has reviewed the Health Care Services consultant report of February 1, 2018 and in particular the process undertaken by the consultant in preparation of his review. He stated:

> … In determining causation, a systematic approach must be followed by the forensic third party reviewer. This process requires the application of a cause (i.e. mechanism of injury) and effect (i.e. diagnosis of the resulting condition) review that determines the medical probability of each effect being related to a proposed cause.

He further stated:

> In the situation where an individual has medical conditions present prior to the proposed causing event, then a further evaluation must be undertaken to determine if the prior condition has been altered by the event in question. This evaluation relies on pre and post event information to determine if a change in condition has occurred.

The consultant appeared to have systematically reviewed all medical information both before and after the accident in question as well as the mechanics of the accident. He noted the driver of the other vehicle and the Appellant described the events of the accident differently. The driver of the other vehicle involved in the collision reported on November 5, 2015 that "he was driving approximately 10 kilometers per hour." He reported that he slid and bumped into the Appellant's car lightly, whereas the Appellant reported that she was hit from behind and her car was pushed forward. She reported that the other vehicle was travelling about 50 kilometers per hour.

The consultant stated:

> Notwithstanding the differences in reporting, the reported damage to [the Appellant's] vehicle was minimal and consisted mainly of damage to the bumper

> region. No damage was reported by the other driver. This reported mechanism of injury (rear collision with presented damage) would not be one that would be expected to transmit significant force into the driver's compartment so as to lead to risk for significant head injury or other significant physical injuries.
>
> …
>
> What can be determined by review of the early information outline above is that the reported symptomatology following the motor vehicle collision matched the symptomology prior to the motor vehicle collision.
>
> …
>
> Following the motor vehicle collision, the reported symptomology was similar if not the same in region and quality as that prior to the motor vehicle collision. Although [the Appellant] had indicated an exacerbation had occurred in her symptoms post collision, this could not be confirmed independently by this reviewer in looking at the documentation present in the clinical submissions.
>
> …
>
> The only new symptom presentations pre and immediately post-collision was in the presence of the rib pain and blurred vision… no specific report of rib pain was present in the notes… and no diagnosis was provided to account for the rib pain… Without a specific diagnosis to account for the symptoms and how they relate to the collision, a probable causation association between the motor vehicle collision and rib pain cannot be made. Another symptom report was blurred vision. This was reported by [Appellant's chiropractor #2]… he performed a vision assessment and found all testing was normal. No condition was identified to account for this symptom. This symptom was not reported again by [Appellant's chiropractor #2]… Without these symptoms being categorized by a diagnosis that relates to the collision, a causation association cannot be determined.
>
> …
>
> … this reviewer cannot conclude that new conditions occurred directly as a result of the motor vehicle collision on the balance of medical probabilities.
>
> …
>
> This reviewer also cannot determine that, on a balance probability, an aggravation of the reported pre-existing complaints or conditions occurred following the motor vehicle collision. Only by report from [the Appellant] was there a potential exacerbation in symptomology. However, this cannot be confirmed independently.

The panel accepts the findings of the Health Care Services consultant as the consultant had the benefit of reviewing all reports on file both before and after the MVA of October 27, 2015.

For the reasons set out above, the panel finds that the Appellant has not met the onus of establishing that, on a balance of probabilities, her current injuries complaints were caused or exacerbated by the MVA of October 27, 2015. Therefore, the Appellant is not entitled to PIPP benefits.

Accordingly, the Appellant's appeal is dismissed and Internal Review Decision dated March 18, 2016 is upheld.

Dated at Winnipeg this 30th day of August, 2019.

NIKKI KAGAN

JANET FROHLICH

PAUL TAILLEFER