

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [The Appellant]  
AICAC File No.: AC-18-141**

**PANEL:** Jacqueline Freedman, Chair  
Linda Newton  
Paul Taillefer

**APPEARANCES:** [text deleted] (the “Appellant”) was represented by Ken Kaltornyk; Manitoba Public Insurance Corporation (“MPIC”) was represented by Matthew Maslanka.

**HEARING DATES:** October 18 and 19, 2021

**ISSUE:** Whether the Appellant’s PIPP benefits were correctly terminated effective March 30, 2018.

**RELEVANT SECTION:** Paragraph 160(d) of The Manitoba Public Insurance Corporation Act (the “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**

**Background:**

The Appellant was a cyclist injured in a hit and run accident on October 9, 2010 (the “MVA”). The Appellant suffered injuries as a result of the MVA and received treatments pursuant to the Personal Injury Protection Plan (“PIPP”) provisions of the MPIC Act, including physiotherapy, chiropractic treatment and Income Replacement Indemnity (“IRI”) benefits.

After a period of time, MPIC determined that it was necessary to obtain further information regarding the Appellant's function. The case manager scheduled the Appellant for a Functional Capacity Evaluation ("FCE") on March 6, 2018 at [physiotherapy clinic]. A letter dated February 13, 2018, was sent to the Appellant confirming the details of the appointment. The letter advised the Appellant to call [physiotherapy clinic] if he was unable to attend the appointment. The Appellant did not contact [physiotherapy clinic] and did not attend the scheduled appointment on March 6, 2018.

On March 7, 2018, the case manager sent him a letter noting his failure to attend, and providing two possible alternate dates for the FCE appointment: March 13 and March 20, 2018. He was asked to contact [physiotherapy clinic] by March 12, 2018, to advise as to which date he would be attending for the FCE. The letter also advised the Appellant that his PIPP benefits would be suspended as of March 21, 2018, if he did not contact [physiotherapy clinic] by the March 12 deadline. The Appellant did not contact [physiotherapy clinic] by the deadline, nor did he attend on either of the offered dates for the FCE.

On March 21, 2018, the case manager sent a letter to the Appellant, noting that he had not rescheduled the FCE or contacted [physiotherapy clinic]. The case manager suspended the Appellant's PIPP benefits. The letter also advised the Appellant that if he did not contact [physiotherapy clinic] to arrange for an FCE by March 30, 2018, his PIPP benefits would be terminated. The Appellant did not contact [physiotherapy clinic] by the deadline.

On March 30, 2018, the case manager issued a decision letter terminating the Appellant's PIPP benefits effective as of that date. In the decision, the case manager noted that restrictions had been

placed on communication by the Appellant, and he was only permitted to contact MPIC staff in writing or via a third-party representative.

The Appellant disagreed with the decision of the case manager and filed an Application for Review.

The Internal Review decision, dated December 6, 2018, upheld the decision of the case manager.

The Appellant disagreed with the decision of the Internal Review Officer and filed this appeal with the Commission.

**Issue:**

The issue which requires determination on this appeal is whether the Appellant's PIPP benefits were correctly terminated effective March 30, 2018.

**Decision:**

Following a review of the documentary evidence on file, the testimony of the witnesses and the submissions of the parties, and for the reasons set out below, the panel finds that the Appellant's PIPP benefits were not correctly terminated effective March 30, 2018.

**Preliminary and Procedural Matters:**

This hearing was held during the COVID-19 pandemic, and took place primarily by videoconference, with the consent of the parties. The Appellant's father, [text deleted], had technical difficulties, and his testimony proceeded by teleconference, with the consent of the parties.

At the outset of the hearing, the parties agreed that paragraph 160(d) of the MPIC Act, as set out below, is the sole paragraph of section 160 at issue in this appeal.

**Legislation:**

The relevant provisions of the MPIC Act are as follows:

**Corporation to advise and assist claimants**

**150** The corporation shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the compensation to which they are entitled under this Part.

**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 [...]

(d) without valid reason, neglects or refuses to undergo a medical examination, or interferes with a medical examination, requested by the corporation;

**Effect of lack of formality in proceedings**

**183(7)** No proceeding before the commission is invalid by reason only of a defect in form, a technical irregularity or a lack of formality.

**Powers of commission on appeal**

**184(1)** After conducting a hearing, the commission may

- (a) confirm, vary or rescind the review decision of the corporation; or
- (b) make any decision that the corporation could have made.

**Evidence for the Appellant and for MPIC:**

The Appellant provided numerous medical reports from health care providers in support of his appeal.

He also testified at the hearing, along with his father, [text deleted], and his treating family physician, [text deleted].

MPIC provided numerous medical reports from its health care services (“HCS”) consultants, as well as case managers’ notes on the Appellant’s file. Counsel for MPIC did not call any witnesses, but did question the Appellant and [family physician] on cross-examination.

**The Appellant:**

As indicated above, the Appellant testified and was cross-examined at the hearing of his appeal.

The Appellant described the MVA, in which he was riding his bicycle and was hit by a vehicle. The force of the impact caused him first to strike the hood of the vehicle, and then to land on the concrete. He grabbed onto the license plate of the vehicle to keep from being dragged under vehicle. He hit his head on the concrete, and also injured his neck, shoulder, back and hip. He said he continues to suffer from cognitive issues as a result of the MVA, including difficulty with dates and geometry. At the time of the MVA, the Appellant had a good job, working full-time as a [text deleted] with a general contractor. He considered himself to be well-suited for that work because he is “a bit of a roughneck”.

Prior to the MVA, the Appellant had some psychological difficulties. He noted that he has had issues with emotional regulation his whole life, and problems dealing with people. However, his psychological function has really declined over the last two years, to the point where he has tried to take his own life a few times, most recently on January 31, 2021. At that point, his personal circumstances were quite dire. He expressed that it has been a “roller coaster” with MPIC, even before his benefits were terminated. Since his MVA, he has had to rely on his benefits received from MPIC as well as Employment and Income Assistance (“EIA”) benefits. At times he’s had to choose between paying his rent and buying food. At the age of [text deleted], he’s now had to move back home with his parents, but he considers that he is in a better place now.

The Appellant described two disputes that he had with his case manager. The first dispute related to the retroactive reinstatement of his IRI benefits in early 2017, which had been terminated by MPIC in November, 2013. The Appellant explained that during the three years that he had been without IRI benefits, he had received EIA benefits. The case manager told him that she was going to reduce the

retroactive IRI payment by \$30,000, in order to repay EIA benefits. The Appellant said he had been told by EIA that they were not going to seek repayment, and so a dispute arose between the Appellant and the case manager regarding this holdback. The Appellant spoke to an MPIC supervisor, and then MPIC's Fair Practices office, and the case manager was angry about this. Eventually, he did receive his retroactive IRI payment, but not the full amount; he said the payment was still short almost \$10,000, but he got tired of fighting.

The second dispute with the case manager arose in February, 2017, in connection with the Appellant's request for psychological treatment with [psychologist]. The Appellant was referred to [psychologist] by his family physician, [text deleted], who has been his physician since the age of 18. The Appellant noted that he has difficulty talking to people, explaining what is in his head, and he found a good rapport with [psychologist], and wanted to see him for treatment. [Psychologist] assessed the Appellant over three sessions and recommended 10 treatment sessions at a cost of \$200 per session. MPIC's HCS psychological consultant did not approve the treatment sessions, because at that time, the then current rate for MPIC's psychological services had been set at \$180 per hour. The case manager advised the Appellant that he had to find another psychologist. The Appellant offered to pay the additional \$20 out-of-pocket, but the case manager refused. He was quite upset, because [psychologist] was a good fit for him, and it was not easy for him to find someone he related to. It took a long time for him to find another mental health care provider, until early 2020. Also, as a result of these disputes, his relationship with the case manager deteriorated. MPIC put him on restricted communication, and he was not allowed to communicate to MPIC other than in writing.

Being cut off from [psychologist] started a downward spiral for the Appellant. In the spring and fall of 2017, he was having a difficult time. He was trying to get into school and re-educate himself, but he was also in the midst of a custody battle for his children. He felt trapped, and even though he was

receiving IRI benefits, he didn't care about anything, and wasn't paying his bills. This continued until 2019, when he reconciled with his family. In early 2018, the Appellant went to camp at a lake in [text deleted] that he's been going to since he was a child. It's the place where he always goes when things are difficult for him. He tries to isolate himself to get back in control. The Appellant couldn't say with certainty when he was there; he acknowledged that he has difficulty with linear timelines. He has been going back and forth to the "bush" in [text deleted] his entire life.

During this period of time, late 2017 and early 2018, the Appellant was still receiving IRI cheques from MPIC at his address in [text deleted]. These cheques went to a community mailbox, and his friend had a key. Sometimes his friend would deposit the cheques for him and sometimes his ex-partner would do so. He came into [text deleted] a few times, but he tried to stay away from the city as much as possible.

The Appellant acknowledged that the letters dated February 13, 2018, March 7, 2018 and March 21, 2018, sent by the case manager in respect of the FCE, were received at his [text deleted] address; however, he did not open them at the time they were received. He said his desk was a mountain of unopened mail. It was only when the Appellant received an IRI cheque that was much smaller than the usual IRI cheques that he realized that he must have missed something. At that point, he started opening mail to see what he missed. When he saw the letters in respect of the FCE, he tried to rectify the situation as soon as it was possible for him to do so. However, being cut-off from his MPIC benefits caused him severe distress.

Early April, 2018, was the height of the Appellant's downward spiral. He attended to the psychiatric crisis unit, and was admitted to hospital for 3 to 5 days (he couldn't recall exactly). On April 5, 2018, he was referred to the Crisis Stabilization Unit, experiencing suicidal ideation. He said it hurt to

breathe, and he thought he had regressed to a point where he wasn't a very nice person. He felt that the Crisis Stabilization Unit couldn't help him, because his situation was impacted by so many outside stressors, and he was discharged. On April 6, the Appellant went to see [family physician]. He said he was trying to dig himself out of the hole. At that time, he was having difficulty with memory, to the point where he didn't even recall a head-on collision which had occurred in January, 2018. He hadn't been paying his bills for his residence in [text deleted], and all his utilities were shut off. He had been trying not to sleep to avoid night terrors.

On May 15, 2018, he got together with his ex-partner and she called the case manager, but they were unable to reach her. They did so again on May 24, 2018, at his counsel's office, at which time his ex-partner advised the case manager that they had called [physiotherapy clinic] to try to reschedule, but were told that this would have to be done through MPIC. The Appellant said that the case manager would not allow him to reschedule the appointment, and was firm in the termination of his benefits. This was very difficult on his mental health. He attended the Crisis Response Centre again on July 28, 2018, experiencing suicidal and homicidal ideation. He was assessed, but he was not admitted. He said he was discharged into the care of a friend.

As mentioned, the Appellant reconnected with his family in early 2019. That was very helpful for him, because at that time he had been really struggling, living in difficult conditions and trying to stay sober. He had been trying to deal with MPIC and the custody issues with his children (three of his children are under the age of 13), but he was having difficulty. His father started to assist him with some of his issues. His father took over dealing with [child services], and guided him in dealing with MPIC. The Appellant found a new psychiatrist, [text deleted], who started treatment with him about a year ago. The Appellant expressed that he did not want to be a person on any drugs, let alone street drugs. He had night terrors, and [psychiatrist] helped him with this, by prescribing medication



which eliminated the dreams. He doesn't need that medication anymore, and has been able to get to a better point mentally, although he did attempt to take his life in January of this year. He knows he is not out of the woods in terms of his psychological status, but he has been sober for a long time.

The Appellant would like to get to the point where he is self-sufficient. He would like to be able to go back to work, but he is not able to return to [text deleted]. He is not physically able to be a [text deleted] anymore, and he doesn't have the education to be a [text deleted]. For that reason, he wants to get re-educated, so that he could take advantage of other opportunities. But if need be, he said he would be prepared to be a [grocery store greeter], even though he did not think he was well suited to that. He also said that he needs treatment because he is still in pain, and quite fatigued.

The cross-examination of the Appellant covered the Appellant's mail and IRI cheques. The Appellant confirmed that MPIC had his correct [text deleted] mailing address in February and March, 2018. He noted that he also had a mailing address in [text deleted], but acknowledged that he had not provided it to MPIC. The Appellant also confirmed that MPIC was sending his biweekly IRI cheques to his [text deleted] address, and that he received and cashed some himself. He noted that the cheques for larger amounts had to be cashed by him personally; however, the cheques for smaller amounts could be cashed by others, including his ex-partner, [text deleted], his friends, or even his landlord. They were able to do this because he gave them his account number. His ex-partner, [text deleted], benefited financially, because she kept a portion of the funds, as she is the mother of three of his children. When asked why he didn't cash all the cheques personally, the Appellant explained that it was because he was in [text deleted].

The Appellant confirmed that he was receiving all of his mail, just not opening it. If it didn't have anything to do with money, he wasn't interested in it, and he didn't instruct anyone to open it. He said that he was not expecting another treatment program from MPIC. He noted that he was not even

opening his hydro bills, and all of his utilities got cut off. He never resided at the house in [text deleted]. He did not dispute that there were times in January and March, 2018, that he was in [text deleted]. When asked whether he was aware that MPIC only communicated with him by mail or through a third-party, the Appellant said that it was his understanding that MPIC could communicate with him through email as well.

Counsel questioned the Appellant regarding when he first learned of the request for the FCE. The Appellant explained that when he found out that his last IRI cheque was in a smaller amount than usual, he got called in from the bush, and realized he was being cut off by MPIC. When questioned whether this caused his breakdown in early April, 2018, the Appellant said that he was already in turmoil at that time, to the point where he didn't remember a head-on collision, and being cut off was the "last straw". He said he called the doctor and tried to reschedule, but the doctor said he had to go through the case manager, and then he spiraled.

When asked about his thoughts regarding the request to attend the FCE, the Appellant responded that he didn't know what an FCE was, he just knew that it was another doctor to go to. Although he has had some bad experiences with doctors that MPIC has sent him to, he intended to comply regardless, because he wants to get better. The Appellant was asked why it took until May 15, 2018 for the Appellant and his third-party representative, [text deleted], to call the case manager. He explained that he had to "get my head right"; he has been cut off several times for reasons that he doesn't agree with. Counsel suggested to the Appellant that he saw the case manager's letters in March and chose not to respond to them. The Appellant replied that all he was interested in at that time was his IRI cheques. He didn't even have power or water in his [text deleted] residence, and he didn't even pay \$70 to get his brand-new truck out of impound.

When asked whether he agreed that he tends not to see [family physician] when he is doing well, the Appellant said that he sees [family physician] every six weeks. He makes his own appointments. He agreed that he did not see [family physician] in February or March, 2018, “until I hit the wall”. The Appellant said he had learned that suspension of his benefits could be a possibility; he acknowledged that he received a few letters saying he had to attend or he would be suspended when he was in treatment with [text deleted], but he has always complied. In this instance, as soon as he realized the problem, the moment he was mentally capable of sitting down with his representative, he tried to comply.

The Appellant was asked about his ability to return to work. He noted that he briefly tried to work as a [text deleted], but was unable to do so. He does not have a high school diploma, and expressed that he would not do well in a service job because he is “rough”. He said it took him years to find [text deleted] as a vocation, but he is unable to do that now due to his injuries and as well because “geometry was knocked out of my head”. He would like to be retrained.

The Appellant was also questioned regarding his behaviour with the case manager that led to his being restricted to only written communication. The Appellant explained that this occurred when he initially asked for psychological treatment, and he told the case manager that he was having nightmares. He said that’s when he got into a dispute with MPIC. He explained the nightmare to the case manager, and said that although it was bad to hear, it was worse to live with. As a result of the conflict, he lost the ability to see [psychologist].

On questioning from the panel, the Appellant was asked whether his expression of thoughts of “leveling” MPIC was an explanation of the content of his dreams. He responded that it was, and that he was being open and asking for help, but the case manager rebuffed him, and it took him years to

get help. On further questioning from the panel, the Appellant asked who has been helping him with his psychological behaviour. He responded that [family physician] and [psychiatrist] have been working with him, to get him back to the point where he was before the MVA, where he was independent. He expressed that he would prefer to be taking care of his parents, rather than the other way around.

**[Appellant's Father]:**

[Text deleted] is the Appellant's father. He testified at the hearing. MPIC did not cross-examine him.

[Appellant's father], who noted that he is a trained youth social worker, explained that after a period of estrangement, the family re-established their relationship with the Appellant in January, 2019. At that time, he observed that the Appellant appeared to be suffering from deep anxiety and anger, even PTSD. He was clearly having a difficult time.

The Appellant moved back home on October 1, 2021. The family has been providing emotional support to the Appellant since they reconnected in 2019. The family has also helped financially and psychologically. [Appellant's father] has also provided advice and direction to the Appellant in dealing with various agencies, including [child services]. Since 2019, [Appellant's father] has seen improvement in the Appellant, although at times there are challenges. He will do whatever he can to help the Appellant.

**[Family Physician]:**

[Text deleted] has been the Appellant's treating family physician since the Appellant was age 18. In addition to his testimony at the appeal hearing, he provided numerous medical reports regarding the

Appellant's MVA injuries, as well as copies of his clinical notes from May 10, 2006, to April 14, 2011, and from May 5, 2016, to February 4, 2021.

[Family physician] has been practising family medicine for over 25 years. He has a Bachelors Degree in psychology, and was a medical consultant in MPIC's HCS team (half-time) for three years. He was qualified as an expert in the field of family medicine.

In [family physician]'s opinion the Appellant is currently experiencing psychological difficulties. The Appellant appears overwhelmed, and he is sad, angry, stressed and anxious. He is currently being seen by [psychiatrist], a psychiatrist to whom he was referred by [family physician].

The doctor cannot recall a time when the Appellant was problem-free, but his difficulties became a lot worse two to three years ago. The contributing stressors are: coping with chronic pain; financial difficulties; conflict with partners; custody battles regarding his children; and, frustration arising from dealing with MPIC.

[Family physician] referred specifically to an appointment from April 6, 2018, when his chart note recorded that the Appellant was "overwhelmed by stress". He said that the Appellant exhibited symptoms and behaviour reflective of this stress. The Appellant is quite demonstrative when he is upset, and on that date he was expressing that he couldn't cope. He was very upset, to the point that he was tearful. The doctor could not recall specifically whether he was aware that the Appellant had been seen at the Crisis Stabilization Unit on April 5, 2018, but he was aware that the Appellant had been there previously. It was his view that when he saw the Appellant in early April, the Appellant would have had difficulty dealing with personal matters, including insurance matters.

On cross-examination, [family physician] acknowledged that he did not see the Appellant in February or March, 2018, and so he had no direct knowledge of his state of mind at that time.

[Family physician] was asked about his report of May 16, 2019. He agreed with the statement in the report that he sees the Appellant when he is struggling and doesn't usually see him when he is feeling well. He confirmed that an adjustment disorder involves a reaction to stressors, and that the greater the stressors, the lower the Appellant's ability to function and vice versa. [family physician] was questioned regarding the statement in his report that: "it is very conceivable that his health and psychological issues would have interfered with his ability to effectively deal with various life issues including insurance related matters in early 2018", and he acknowledged that he could not know this for sure. He said that being cut off from MPIC benefits could be a triggering event, which would bring about increased stress.

The doctor acknowledged that the Appellant's diagnosis is elusive; in his view it is an adjustment disorder, but he said he would defer to the psychiatrist, to whom he has referred the Appellant. The Appellant has symptoms of depression and anxiety; these may fluctuate, in response to things going on in his life. [Family physician] is supportive of the idea that the Appellant should find some kind of employment.

On questioning from the panel, [family physician] was asked whether he had seen the Appellant when he was expressing suicidal thoughts, or threatening thoughts towards institutions. He responded that he had seen that, and he interpreted that to mean that the Appellant was overwhelmed, and unable to cope with the stressors in his life.

**Submission for the Appellant:**

Counsel for the Appellant submitted that in considering whether MPIC correctly terminated the Appellant's PIPP benefits effective March 30, 2018, under paragraph 160(d) of the MPIC Act, it should be noted that MPIC has considerable discretion in determining whether to apply section 160 in the first place, in that the legislation provides that MPIC "may" undertake certain actions, but is not required to do so. Further, in the list of actions MPIC is empowered to undertake, termination is only one of them; reducing benefits and suspending benefits are alternate actions that MPIC may choose to undertake under section 160.

Paragraph 160(d) of the MPIC Act is only applicable where a person, without valid reason, neglects or refuses to undergo a medical examination requested by MPIC. It is the Appellant's position that he did not refuse to undergo the FCE. He acknowledges that he did neglect to open the letters from MPIC when they were originally received, with the result that he missed the FCE appointments that were originally scheduled for him. However, it is the Appellant's position that he had a valid reason for neglecting to open his mail and missing the FCE appointments, specifically his psychological condition, from which the Appellant has been suffering for a considerable period of time.

Counsel submitted that there were many factors impacting the Appellant's psychological state in 2017 and early 2018. The Appellant testified that during the spring and fall of 2017, he was experiencing multiple problems, including difficulty with his ex-partner, issues relating to custody of his children, chronic pain, as well as sleep problems. He went to northern [text deleted] in early 2018, as he would often do when he was having difficulty coping, in order to be isolated and try to get his thoughts straight. He came to [text deleted] occasionally, and did cash some large IRI cheques from MPIC, but in most cases others cashed his IRI cheques. The Appellant said that he was in no state to deal with any mail, and he didn't deal with any of his utilities or pay any bills. He didn't spend any time at his [text deleted] address, and there was a pile of unopened mail there. As a result, he did not

open the letters from the case manager regarding the FCE dated February 13, March 7, March 21 and March 30, 2018, when they were received at his [text deleted] address. He had no reason to expect anything from MPIC other than his IRI cheques, and he said that was the only mail that he told others to open. When the Appellant was told that his IRI cheque was much smaller than usual, he drove into [text deleted], and opened all his mail. When he realized what had happened, and that his benefits had been terminated, this caused him to melt down, and he ended up spending several days in a psychiatric ward. MPIC's termination of benefits was a triggering event, but he was not doing well before that.

[Family physician] saw the Appellant on April 6, 2018, after he was released from the Crisis Stabilization Unit on April 5, 2018. The Appellant said that he makes an appointment with [family physician] when he can no longer cope at all, and that [family physician] is his lifeline. At the April 6, 2018, appointment, [family physician] noted in his chart that the Appellant was "overwhelmed by stress", and that he had been having episodes where he did not have any memory of what he had done. Counsel pointed out that the Appellant had seen a psychologist, [text deleted], about a year earlier, in February, 2017. At that time, [psychologist] opined that the Appellant was suffering from depressive ideation and chronic pain syndrome as a result of his MVA injuries. He also noted problems with memory, concentration and focus. The Appellant testified that he has difficulty with linear thinking, and that he doesn't remember the January, 2018, accident that he was in.

The Appellant was also in an accident in late March, 2019. Counsel submitted that these two accidents, which occurred, respectively, before and after the dates of the case manager's letters, are not relevant to the issue of the Appellant's psychological condition at the relevant time.



It had taken [family physician] quite a while to find a psychologist that was a good fit for the Appellant; eventually he had found [psychologist], with whom the Appellant was quite comfortable. MPIC funded three treatments for the Appellant with [psychologist], who provided a report to MPIC dated February 20, 2017, recommending 10 sessions at \$200 per session. The case manager refused to allow him to proceed with the treatments, because [psychologist] charged \$20 more than MPIC's approved rate of \$180 at that time. Because of the denial of psychological treatment, the Appellant's condition deteriorated. In addition, the conflict with the case manager regarding the Appellant's choice of psychologist had a negative impact on his mental health, as had the earlier conflict over the holdback portion of the retroactive IRI payment. Counsel submitted that but for the case manager, the Appellant could have had much needed treatment, and many of his problems could have been avoided. Counsel argued further that the Appellant's relationship with the case manager was one of the stressors that contributed to his breakdown in April, 2018.

It took a further two years to find someone else to treat the Appellant's psychological condition. The Appellant has been working on things, with the help of [family physician] and now [psychiatrist]. His father testified that the Appellant reconciled with his family in January, 2019, after 10 years, and he has seen improvement. The Appellant would like to get retraining, and get back to some type of employment.

Counsel pointed out that as soon as he was mentally able to do so, the Appellant tried to rectify his mistake in having missed the scheduled appointments, and he attempted to comply. He called [physiotherapy clinic] to reschedule, and was told that he had to go through the case manager. This was complicated by the fact that MPIC had denied him the ability to communicate except by letter or through a third-party. He got his third-party representative to help him, and they called the case manager to try to arrange a new appointment for the FCE, but this was denied by the case manager.

Counsel submitted that the reasonable thing for the case manager to have done on May 24, 2018, when the Appellant and his third-party representative called, was to make the reinstatement of his IRI contingent on him attending the FCE appointment. To terminate the Appellant's PIPP benefits, despite his mental state, and in the face of his attempt to comply, was more for the purpose of punishing him, than to bring about a resolution.

It is the Appellant's position that his PIPP benefits were wrongfully terminated by MPIC, and they should therefore be reinstated, because the Appellant had a valid reason for failing to attend the FCE. Counsel submitted that the IRD should be overturned, to reinstate the Appellant's PIPP benefits to March 21, 2018, when they were first suspended by MPIC. In the alternative, counsel submitted that if the panel were to determine that the Appellant did not have a valid reason, then a suspension of the Appellant's PIPP benefits would be the appropriate penalty for his failure to attend the FCE. He argued that the period of suspension of his PIPP benefits should last only until May 31, 2018, which is one week after his phone call to the case manager on May 24, 2018. Based on the case manager's letters, it would only have taken one week to reschedule the FCE appointment, and the Appellant had clearly demonstrated his willingness to attend for the FCE as of May 24, 2018.

Counsel reviewed the cases provided by counsel for MPIC, and submitted that they were supportive of the Appellant's position. He noted particularly that in AC-05-14, the Internal Review Officer had offered the appellant in that case the opportunity to attend a third party examination in the future, which would have the effect of reinstating her PIPP benefits (although it would not be retroactive to the date coverage was suspended). Counsel argued that MPIC has a duty to apply section 160 of the MPIC Act fairly and consistently. Here, when the Appellant called the case manager and offered to comply, his offer was rejected. Counsel also referred to the case that he had submitted, AC-02-77, in which the Commission found that the appellant had a valid reason under paragraph 160(d) for

refusing to undergo a medical assessment. Here, the Appellant's valid reason is that he was psychologically unfit to deal with any correspondence in early 2018.

**Submission for MPIC:**

Counsel for MPIC submitted that the Appellant failed to discharge the onus upon him to show that the IRD was in error. It is MPIC's position that the only issue is whether the Appellant provided a valid reason for not attending the FCE, and that he did not do so. Therefore, his PIPP benefits were correctly terminated effective March 30, 2018, under paragraph 160(d) of the MPIC Act.

The Appellant confirmed that the letter sent to him by the case manager on February 13, 2018, with the initial appointment for the FCE, was sent to his correct [text deleted] mailing address, and that this was the correct [text deleted] mailing address throughout the relevant period. Because the Appellant did not respond to that letter, the case manager sent a follow-up letter on March 7, 2018. When no response was received, the case manager sent the third letter on March 21, 2018. Counsel acknowledged that the deadlines provided in the letters were short; however, the Appellant could have responded if he so chose.

In the three letters, MPIC explained what was required of the Appellant, as well as the repercussions of inaction. The Appellant was told that his benefits would be suspended, or terminated if he failed to act. No action was taken by the Appellant. Therefore, on March 30, 2018, the case manager sent a decision letter, terminating the Appellant's PIPP benefits. Counsel submitted that this sequence of events was appropriate, and that these were reasonable steps taken by MPIC to request the Appellant's attendance at the FCE. The case manager noted that she had confirmed that the Appellant was receiving and cashing IRI cheques sent to the [text deleted] mailing address, so it was reasonable of her to assume that he would receive correspondence that she sent to that same address.

The issue before the Commission is whether a valid reason was provided for the Appellant's failure to attend the FCE. The Appellant has said that he received the letters, but that his psychological condition prevented him from opening them when they were received. Counsel submitted that there were some inconsistencies in the communications between the Appellant and MPIC, and he argued that these inconsistencies affect the Appellant's reliability. For example, when the Appellant and his third-party representative spoke to the case manager on May 25, 2018, the third-party representative stated that the Appellant had been camping in [text deleted] since February 2018, and he had not received any of his mail. However, the Appellant had been receiving and cashing IRI cheques, although he said others had been cashing them. Similarly, in his Application for Review, the Appellant stated that he had not received any of his mail, and that he opened the case manager's letters on April 17, 2018; however, based on the Appellant's testimony, it appears that the Appellant opened the case manager's letters at the beginning of April, before he was admitted to the crisis unit and subsequently discharged on April 5, 2018. This reflects a change in the Appellant's story over time. Initially, he told MPIC that he did not receive his mail; subsequently, he said he received his mail but did not open it.

Whether the Appellant had not received his mail because he was in [text deleted], or whether the Appellant had received his mail and had not opened it, in neither case would this constitute a valid reason for failing to attend the FCE, because inaction is not a valid reason under section 160, especially since the Appellant knew that the only way MPIC would communicate with him would be by letter.

Counsel submitted that the evidence does not show that the Appellant was suffering from a psychological condition significant enough such that it would have prevented him from opening his mail. Counsel argued that the Appellant's testimony was not sufficient to support this, and the onus

is on the Appellant here. Although the Appellant said he had other people cashing his IRI cheques, no other witnesses were called to confirm that they had cashed his IRI cheques or had been getting his mail. The Appellant did not call other evidence to show that he had been behind in his payments, or to support his testimony that he was in grave difficulty during the relevant period. Further, there were no visits to [family physician] during February and March 2018, and [family physician] said he tends to see the Appellant when he is struggling, but not when he is doing well. He said the Appellant's symptoms fluctuate depending on what is going on in his life.

Counsel submitted that there is evidence on the file of other periods where the Appellant was struggling, but not during February and March, 2018. Rather, the evidence shows that the termination of benefits by MPIC was a triggering event, which lead the Appellant to the crisis response unit; but that is after the benefits were terminated, and so that cannot be considered a valid reason for the Appellant's failure to attend the FCE. There is no evidence to suggest that the Appellant was suffering from a diagnosed psychiatric disorder that would have prevented him from opening his mail. What was being asked of him was not onerous; he was being asked to make a phone call and attend an FCE.

Counsel reviewed the case law that he had provided to the Commission. He noted in particular AC-15-234, which was a case dealing with a request for an extension of time. In that case, the Commission determined that the appellant's personal circumstances and medical conditions did not provide a reasonable excuse for his failure to file his Notice of Appeal on a timely basis, noting that the appellant provided no medical documentation in support of his position. The Commission also found that, knowing that the Internal Review Decision was pending, it was not reasonable for the Appellant in that case not to make efforts to locate it in his mail, and once he did locate it, not to read the full decision.

Here, the only thing that would render the Appellant's conduct a valid reason, is if he suffered from a psychological condition, and it is MPIC's position that this has not been established, based on the evidence. It is MPIC's position that termination of the Appellant's PIPP benefits effective March 30, 2018, is appropriate in the circumstances. This is a reasonable result, based on the sequence of letters, which explained very clearly to the Appellant what the consequences of his inaction would be. There is no reason why the termination should be altered to a suspension, because there needs to be an escalation of consequences, and unfortunately, the Appellant must suffer the repercussions of his inaction. Even though he tried to rectify it later, and tried to resuscitate his claim, at that point it was too late, as his PIPP benefits had already been terminated. The Appellant did not have a valid reason for failing to attend the FCE; therefore, the IRD must be upheld.

### **Discussion:**

The onus is on the Appellant to show, on a balance of probabilities, that his PIPP benefits were not correctly terminated effective March 30, 2018. In particular, the Appellant needs to show, on a balance of probabilities, that he did not neglect or refuse to undergo a medical examination requested by MPIC, without valid reason, as set out in paragraph 160(d) of the MPIC Act, above.

### **Was there Neglect or Refusal?**

In order for paragraph 160(d) of the MPIC Act to apply, it must first be established that the Appellant "neglect[ed] or refuse[d] to undergo a medical examination" requested by MPIC (here, the FCE).

The Concise Oxford Dictionary, 10<sup>th</sup> edition, provides the following definitions:

Neglect: *v.* fail to give proper care or attention to; fail to do something.

Refuse: *v.* indicate unwillingness; indicate unwillingness to accept or grant (something offered or requested).

It seems clear that “refusal” requires active rejection, whereas “neglect” involves the passive failure to do something. The Appellant did not, at any point, indicate unwillingness, or actively reject MPIC’s request, to undergo the FCE. We therefore find that the Appellant did not refuse to undergo the FCE within the meaning of paragraph 160(d) of the MPIC Act. The question then arises as to whether he neglected to undergo the FCE requested by MPIC within the meaning of paragraph 160(d) of the MPIC Act.

We note that counsel for the Appellant, in argument, stated that the Appellant acknowledged that he did neglect to open the letters from MPIC when they were originally received, with the result that he missed the FCE appointments that were originally scheduled for him. However, it was his position that he had a valid reason for doing so (discussed below). Counsel for MPIC stated that it is MPIC’s position that the only issue is whether the Appellant provided a valid reason for not attending the FCE, and that he did not do so.

Neither party addressed the point as to whether neglecting to open the mail from the case manager when it was received is the same thing as neglecting to undergo the FCE, within the meaning of paragraph 160(d). This raises various issues, including, for example, whether it is necessary that the Appellant had been aware of the scheduled FCE appointments. The parties agree that the Appellant, simply by virtue of having missed the FCE appointments, had “neglect[ed] [...] to undergo a medical examination” requested by MPIC within the meaning of paragraph 160(d).

Given that this point was not argued before us, we will accept the position of the parties, that the Appellant neglected to undergo a medical examination (the FCE) requested by MPIC, within the meaning of paragraph 160(d) of the MPIC Act. We have considered further below whether he had a valid reason for so doing.

### Section 150 of the MPIC Act and Deadlines set by the Case Manager

While it is not strictly necessary for our decision, we thought that it would be helpful to the parties, at this point, to make certain observations regarding section 150 of the MPIC Act, which, as set out above, outlines the duty of MPIC to advise and assist claimants, particularly since it was referred to in the Internal Review Decision dated December 6, 2018.

Given the duty imposed by section 150, we would conclude that in order for the case manager properly to assist claimants, a reasonable time to respond to deadlines must be provided to them. Recognizing that what is reasonable may vary in the circumstances, we are nevertheless of the view that the deadline of two business days provided by the case manager in the March 7, 2018, letter seems to be unreasonable. In that letter, the case manager set a deadline of March 12, 2018. Assuming that the case manager's letter was mailed on the date it was written, and taking note that mail delivery would typically take two business days, the Appellant would have had Friday, March 9, 2018 (date of receipt) and Monday, March 12, 2018 (deadline date) to respond.

Similarly, we are of the view that it is not reasonable for the case manager not to allow even one day in between the expiry of a deadline and the subsequent issuance of a decision letter terminating PIPP benefits. Here, in the March 21, 2018, letter, the case manager set a deadline of March 30, 2018, for the Appellant to call [physiotherapy clinic]. It appears that the case manager did not allow that day to expire, but sent the decision letter terminating the Appellant's benefits that very day, March 30, 2018.

The panel has also made further comments regarding section 150 of the MPIC Act below.



### Was there a Valid Reason?

As noted above, we have accepted the position of the parties, that the Appellant neglected to undergo a medical examination (the FCE) requested by MPIC, within the meaning of paragraph 160(d) of the MPIC Act. We have therefore considered whether he had a valid reason for so doing.

As outlined above, it is the Appellant's position that he did not open the case manager's letters when they were received because of his psychological condition, from which he suffered for a considerable period of time, and which constitutes a valid reason for missing the scheduled FCE appointments. It is MPIC's position that the Appellant did not have a valid reason for his failure to attend the FCE, and that the Appellant has not established that he was suffering from a diagnosed psychological condition such that he would have been unable to open and deal with his mail at the relevant time.

#### a) Preliminary Matter - The Appellant's Testimony

The Appellant testified regarding psychological state. He described that being cut off from [psychologist] in February, 2017, started a downward spiral for him. He said that in the spring and fall of 2017, he was having a difficult time. He was in the midst of a custody battle for his children. He said that even though he was receiving IRI benefits, he didn't care about anything, and wasn't paying his bills. In early 2018, he went to camp at a lake in [text deleted], where he always goes when things are difficult for him. The Appellant said that he wasn't in any state to deal with his mail at that time, and he did not open most of his mail when it was received. The only mail that he did open was his IRI cheques from MPIC, and he had also instructed others to do so in his absence. He said that he didn't even open his utility bills, and the utilities at his [text deleted] residence were cut off. He said that he was required personally to cash the IRI cheques that were in large amounts, but that others were able to cash the smaller IRI cheques, and he gave them authority to do so, including his bank account number, and the key to his mailbox. The Appellant also testified that he was not expecting

anything from MPIC other than his IRI cheques. It was only when he was told that his IRI cheque was much smaller than usual that he realized that he must have missed something. At that point, he started opening all of his remaining mail, including the case manager's letters.

Counsel for MPIC submitted that there were some inconsistencies in the Appellant's communications with MPIC, which affect his reliability. In particular, counsel pointed out that when the Appellant's third-party representative first communicated with the case manager on May 24, 2018, the case manager recorded that she was told that the Appellant had been camping in [text deleted] since February, 2018, and had not received any of his mail. However, in his testimony, the Appellant said that he had received his mail but not opened it, other than the IRI cheques, which were being cashed by others. We do not consider the statement made by the Appellant's third-party representative, as recorded by the case manager in her file note, to be a material inconsistency affecting the Appellant's reliability. It is certainly possible that a layperson could use the word "received" without precision, using it either to mean that correspondence was or was not actually received, i.e. in their possession, or more colloquially, to mean that correspondence was or was not opened.

Counsel for MPIC also pointed out that the Appellant called no other witnesses to confirm his testimony regarding the handling of his mail and his IRI cheques. We note that there is no onus on an appellant to call corroborating testimony. The Appellant was questioned on this matter on cross-examination, and his testimony on this point was firm, and undisputed by any other witness. In fact, his testimony was confirmed by the case manager's file note of May 25, 2018, which records the following: "[text deleted] said she had been picking up his cheques for him and then had been depositing the cheques on [the Appellant]'s behalf".

Further, [family physician]’s testimony corroborated that of the Appellant regarding the multiple stressors that he was facing, and how these impacted him (see discussion below). We also note that [family physician], who has been the Appellant’s treating physician for over 20 years, found him to be credible, accepting the Appellant’s self-reports without question.

There is also other evidence corroborating the Appellant’s testimony of the stressors affecting the Appellant at the relevant time. In a report dated March 14, 2018, MPIC’s HCS medical consultant, [text deleted], provided advice to the case manager regarding the Appellant’s functional abilities and limitations. He reviewed Personal Care Assistance (“PCA”) reports dated December 21, 2016 and May 23, 2017. While [MPIC’s HCS medical consultant] was of the view that the Appellant did not suffer from MVA-related limitations, he noted non-MVA limitations affecting the Appellant, and he advised the case manager as follows:

The reports do contain evidence indicating factors that are not MVC-related [which might be contributing to the symptoms and functional limitations he reports (i.e., emotional difficulties, extremely stressful life relating to medical status, family litigations and social relationships)].

[MPIC’s HCS medical consultant]’s March 14, 2018, report, as well as the PCA reports, confirm the Appellant’s testimony that he was dealing with multiple stressors. The May 23, 2017, PCA report, which was authored by [text deleted], Occupational Therapist, states as follows:

Since the last report, [the Appellant] reported seeing [text deleted] (chiropractor and physiotherapist) for approximately 6-8 sessions between January and March, 2017. He reported same was discontinued due to experiencing a number of life stressors and mental health issues that impacted his ability to maintain rehabilitation appointments. He would like to continue seeing [chiropractor and physiotherapist] sometime in the near future.

He also advised that he had a psychology assessment with [psychologist] several months ago, due to difficulties with memory, emotional regulation and pain management, which he related directly to injuries sustained in the MVA. He stated that he connected well with [psychologist], but that ongoing funding was not approved for sessions. He was confused and upset regarding same, perseverating on the topic throughout the assessment, and felt adamant that the sessions with [psychologist] would be very helpful for him.

[...]

[The Appellant] reported concerns regarding the lack of stability and structure in his life and expressed a high desire to complete schooling, volunteering and return to work. He felt very stressed out by finances. He also reported that he had a lot of difficulty with emotional regulation (decreased frustration, tolerance, anger, sadness and frequent mood swings). He also reported that he often feels scattered with an impaired memory. He noted that his life is extremely stressful related to his medical status, family litigations and social relationships. Again he stated that a psychologist would assist him with better emotional regulation and pain management in order to move forward in life.

During the assessment, [the Appellant] often spoke at a rapid rate and made minimal eye contact with this therapist. Though his conversation was primarily problem-focused around issues of personal injustice and external stressors, he was friendly and polite with this therapist.

Based on all of the above, we find the Appellant's testimony to be credible and reliable, and we accept the Appellant's testimony.

In particular, we accept the Appellant's testimony that he did not become aware of the FCE appointments until early April, 2018, when he opened all of his mail. We also accept his testimony that he was not expecting any correspondence from MPIC other than his IRI cheques. Therefore, it was not unreasonable that the only mail he asked others to open was his IRI cheques. This is quite different than in AC-15-234, referred to by counsel for MPIC, where the appellant in that case was anticipating an Internal Review Decision, and did not make efforts to locate it in his mail.

b) Did the Appellant Suffer from a Psychological Condition?

Counsel for MPIC argued that the relevant time for assessing the Appellant's psychological condition is February and March, 2018. It is, of course correct, that this is when the case manager's letters were sent, and it is necessary to address, if the Appellant did suffer from a psychological condition, whether that condition prevented him from opening and dealing with his mail in February and March, 2018. However, counsel for the Appellant argued that he has been suffering from a psychological condition

for a considerable period of time. We therefore consider it to be necessary to review all of the relevant medical information on the file which addresses the Appellant's psychological condition. We note here that the issue under consideration is whether the Appellant suffered from a psychological condition, which resulted in a valid reason for his neglecting to attend the FCE. We are not concerned with whether any such psychological condition was caused or contributed to by the MVA, and we make no comments in that regard.

[Family physician], the Appellant's treating family physician since the age of 18, testified regarding the Appellant's psychological condition. He said that he cannot recall a time when the Appellant was problem-free. He also provided a report in that regard dated May 16, 2019, in which he stated as follows:

1. In my medical opinion [Appellant's father] is, in fact, currently experiencing mental health difficulties. I have seen him several times including one extended session of counselling related to these issues.

2. [Appellant's father] is experiencing frustration, stress, difficulty and inability to cope with stress, sadness, anger etc.

3. [Appellant's father]'s diagnosis is elusive to me. I have not had success treating him from a medical perspective. I have referred him to a psychiatrist looking for help with that. At this time I would have to use the diagnosis of DSM 5 code: 309.28 (F43.23) Adjustment Disorder with mixed anxiety and depressed mood: A combination of depression and anxiety is predominant.

[...]

5. Within the context of [the Appellant]'s life and abilities [the Appellant] would perceive the symptoms listed in answer #2 above as severe. He is not equipped with the skills and natural characteristics to deal with the stress contributors and emotions and so it is experienced as overwhelming to him. He has been overwhelmed to the point of being in the Emergency Department expressing feelings of self-harm and suicide. That makes his condition severe.

[...]

8. I have seen [Appellant's father] deal with many stressors but I have never seen him struggle as much as he has in the last year. There are many indicators that he has been pushed further than he has ever experienced. It is very conceivable that his health and

psychological issues would have interfered with his ability to effectively deal with various life issues including insurance related matters in early 2018.

In his testimony, [family physician] confirmed the statements in his report. He further said that it was his view that when he saw the Appellant on April 6, 2018, the Appellant would have had difficulty dealing with personal matters, including insurance matters. On cross-examination, he acknowledged that with regard to paragraph 8 of his report, he could not know for sure whether the Appellant's psychological issues were affecting his ability to deal with life issues in early 2018.

The documentary evidence contains the following additional medical reports which address the Appellant's psychological status:

- Reports from [text deleted], psychologist, dated October 5, 2009 and January 27, 2010, forwarded to MPIC as part of the Appellant's WCB file (pre-MVA). In those reports, [text deleted] noted that he provided psychotherapy sessions to the Appellant, aimed at assisting him to stabilize his mood. No further sessions were approved, and therefore the Appellant was discharged to seek out community resources.
- Primary Health Care Report from [family physician] dated October 28, 2010, in which he recorded that the Appellant developed symptoms of anxiety, depression, and sleep disturbance as a result of the MVA.
- Response to questions from the case manager provided by [family physician] on March 12, 2012, in which he stated that "psychology services would be very beneficial" [emphasis in original].
- Reports from [text deleted], neurologist, dated June 25 and September 13, 2012, who assessed the Appellant regarding his memory issues and fugue states experienced since the MVA. He concluded that the Appellant required assessment by neuropsychology and psychiatry.

- Letter from [family physician] to the case manager dated October 8, 2012, requesting funding for the neuropsychologist assessment recommended by [neurologist] in respect of the Appellant's memory problems.
- Report from [text deleted], psychiatrist, dated August 21, 2013. [Psychiatrist] concluded that the Appellant had not suffered any mental health sequelae from the MVA. He noted that the Appellant suffered from chronic pain syndrome and had an antisocial personality style.
- Follow-up report from [neurologist] dated April 7, 2014, in which he stated that his main focus in evaluating the Appellant was to determine the ideology of his blackouts or fugue states. He again stated that the results of a neuropsychological evaluation would be important.
- Report from [psychologist], psychologist, dated February 20, 2017. [Psychologist] conducted a psychological assessment of the Appellant over three days. He stated as follows:

Based on the reports of [neurologist] and [text deleted] and my assessment, there is evidence of a cognitive/psychological condition as well as Psychological and emotional problems. In my opinion this condition and these problems are directly related to injuries sustained in the MVA on 09/10/2010. I find no indication of a pre-existing condition.

In addition to suffering from Depressive ideation and Chronic Pain Syndrome as a result of his injuries, he is experiencing problems with memory, concentration, focus and extreme frustration. He finds himself struggling with anger management problems which have impacted his ability to deal with people and avoid confrontation.

I believe the prognosis for improvement and symptom control is good given adequate and proper treatment. Treatment includes weekly sessions of Cognitive Behaviour Therapy and Supportive Psychotherapy. These sessions will address his depressive ideation, anger and pain management. It is recommended 10 sessions @ \$200 per session, at which point we can re-evaluate.

MPIC's HCS consultants have also addressed the Appellant's psychological status, in the following reports:

- [MPIC's HCS medical consultant #2], in a file note dated April 10, 2012, stated: "There are reported emotional issues. Should these emotional issues persist and the claimant is interested

in attending for some psychological treatment the file can be further reviewed with the Psychological Consultant in HCS”.

- HCS psychological consultant [text deleted], in a report dated December 12, 2017, reviewed the above-noted medical reports from [neurologist], [text deleted] and [psychologist]. [MPIC’s HCS psychological consultant] concluded that the Appellant’s psychological condition was not caused by the MVA. He also noted that the Appellant had “an antisocial personality style that is a pre-existing condition that has led to psychosocial issues for the claimant. [...] Also, the reported depressive symptoms identified by [psychologist] are not unusual for individuals with a pre-existing antisocial personality style [...]”.
- As noted above, HCS medical consultant [MPIC’s HCS medical consultant] in his report dated March 14, 2018, stated that the Appellant suffered from non-MVA related functional limitations, including emotional difficulties (as detailed above).
- [MPIC’s HCS psychological consultant] provided a further report dated June 6, 2019, after reviewing [family physician]’s May 16, 2019, report. He remained of the view that the Appellant did not have an MVA-related psychological condition. He stated as follows:

It should be noted that individuals with an antisocial personality style commonly have adjustment difficulties due to their relational difficulties and poor coping skills as described by [family physician]. Furthermore, it appears that the claimant has a number of significant non-MVA related stressors as well as a pre-existing chronic pain syndrome.

Regardless of causation (with which we are not concerned), it is clear that there is significant medical evidence that the Appellant suffered from a psychological condition, for a considerable period of time, and we so find.

c) Did the Psychological Condition affect the Appellant at the Relevant Time?

Given that we have found that the Appellant suffered from a psychological condition for a considerable period of time, we must then consider whether the Appellant was suffering from that



condition at the relevant time (February and March, 2018), and if so, whether the psychological condition prevented him from opening and dealing with his mail, such as to constitute a valid reason for neglecting to attend the FCE appointments.

As indicated above, the Appellant testified regarding the stressors that he was facing in late 2017, and the emotional difficulties he was having. He said that he didn't care about anything, and wasn't paying his bills. He also said he wasn't in any state to deal with his mail at that time. He said that this situation continued until early 2019, when he reconciled with his family. On cross-examination, when asked if being cut off by MPIC was the trigger for his breakdown in early April, 2018, the Appellant responded that he was already in turmoil at that time, to the point where he didn't remember a head-on collision, and being cut off was just last straw. We accept his evidence, and there was no contrary evidence on this point.

The Appellant testified that he requested psychological treatment from the case manager. This led to his assessment (three sessions) with [psychologist], and the resulting report from [psychologist] dated February 20, 2017, which noted that the Appellant, in addition to suffering from depressive ideation and chronic pain, was experiencing problems with memory, concentration, focus and extreme frustration. These are certainly problems which would have affected the Appellant's ability to cope with daily issues, such as opening and dealing with his mail. As noted above, MPIC denied the treatment recommended by [psychologist]. Without having received the treatment recommended by [psychologist], there is no reason to think that the Appellant's condition would have improved. This is, in fact, borne out by [family physician]'s report and testimony.

[Family physician] saw the Appellant on April 6, 2018. Although this visit was after the date of the case manager's letters, the doctor said that he cannot recall a time when the Appellant was problem-free. In his chart note from the April 6, 2018, visit, and in his report of May 16, 2019, he identified

similar issues affecting the Appellant as had been noted by [psychologist], including depression, chronic pain, problems with memory, frustration, and inability to cope with stress. [Family physician]’s report has been quoted above. The chart note from the Appellant’s April 6, 2018, visit recorded that he was: “[...] overwhelmed by stress. [...] He has been having episodes where he doesn’t have any memory of what he has done. [...] Discussed pain moderating benefits of some anti-depressants [...] The adjustment disorder with anxious/depressed mood may benefit as well”. It is evident that the condition which was affecting the Appellant when he saw [psychologist] in February, 2017, continued to affect him when he saw [family physician] in April, 2018.

As noted above, [family physician], in his testimony, confirmed the statements that he made in his report, as set out above, including paragraph 8, which states that “It is very conceivable that [the Appellant’s] health and psychological issues would have interfered with his ability to effectively deal with various life issues including insurance related matters in early 2018”, although he acknowledged that he could not know this for sure. [Family physician] said that it was his view that when he saw the Appellant in early April, 2018, the Appellant would have had difficulty dealing with personal matters, including insurance matters. [Family physician], who has a Bachelors Degree in psychology, has been the Appellant’s treating physician since he was 18 years old. We accept his opinion regarding the Appellant’s psychological condition and capabilities at the relevant time.

We recognise [family physician]’s proviso, that although, in his view, the Appellant would have had difficulty dealing with personal matters in early April, 2018, with regard to paragraph 8 of his report, he could not know for sure whether the Appellant’s psychological issues were affecting his ability to deal with life issues in early 2018. The panel notes, however, that the Commission is not required to determine causation with scientific certainty. In this regard, we have noted the comments of the Supreme Court of Canada in *Athey v. Leonati*, [1996] 3 SCR 458, where the Court confirmed its

earlier decision in *Snell v. Farrell*, [1990] 2 SCR 311. The Court in *Athey*, referring to its earlier decision, stated at paragraph 16:

The causation test is not to be applied too rigidly. Causation need not be determined by scientific precision; ... and as was quoted by Sopinka J. at p. 328, it is “essentially a practical question of fact which can best be answered by ordinary common sense”.

Applying the threshold test of a balance of probabilities, rather than a test of scientific certainty, the panel finds, based on the Appellant’s evidence, the documented reports of his psychological condition and the evidence of [family physician], that the Appellant has met the onus upon him to establish that he was suffering from a psychological condition at the relevant time (February and March, 2018), and that the psychological condition prevented him from opening and dealing with his mail.

Consequently, we find that the Appellant has established, on a balance of probabilities, that he had a valid reason for neglecting to attend the medical examination (the FCE appointments) requested by MPIC, within the meaning of paragraph 160(d) of the MPIC Act. Therefore, we find that the Appellant’s PIPP benefits were not correctly terminated by MPIC effective March 30, 2018, because paragraph 160(d) of the MPIC Act does not apply in the circumstances.

#### Section 150 and the Appellant’s Psychological Condition

Again, while it is not strictly necessary for our decision, we thought that it would be helpful to the parties, at this point, to make certain further observations regarding section 150 of the MPIC Act.

Given the duty imposed by section 150, we would conclude that in order for MPIC, and in particular the case manager, properly to advise and assist claimants, it would be necessary to take into consideration the Appellant’s psychological condition, including his emotional difficulties, in their dealings with him. Whether or not MPIC is of the view that the Appellant’s psychological condition

was caused by the MVA, it is reasonable to consider that MPIC is required to take the Appellant as they find him.

As noted above, there was considerable medical evidence in MPIC's file, including several reports prepared by MPIC's own HCS consultants, identifying the Appellant's psychological condition and functional limitations. Of particular significance is [MPIC's HCS medical consultant]'s report to the case manager dated March 14, 2018, detailing the Appellant's functional limitations due to emotional difficulties. This was provided to the case manager after she sent out the second letter to the Appellant on March 7, 2018, but before she sent out the third letter on March 21, 2018, suspending the Appellant's PIPP benefits. In an email to counsel for MPIC dated June 15, 2020, the case manager confirmed that she was in receipt of [MPIC's HCS medical consultant]'s report. Although she had this report, it is not clear that she took into account its contents, nor the contents of the numerous other psychological reports on file.

As was pointed out by counsel for the Appellant, with reference to AC-05-14, in other cases MPIC has offered an appellant the opportunity to attend a third party examination in the future, in order to reinstate their PIPP benefits. MPIC has a duty to apply section 160 of the MPIC Act fairly and consistently in all cases, and in each individual case MPIC has a duty to apply the section fairly in the context of that individual.

### Conclusion

Accordingly, after a careful review of all of the documentary evidence filed in connection with this appeal, and after careful consideration of the testimony of the witnesses and of the submissions of counsel for the Appellant and counsel for MPIC, and taking into account the provisions of the relevant legislation and the applicable case law, the panel finds that the Appellant established, on a balance of

probabilities, that his PIPP benefits were not correctly terminated effective March 30, 2018.

We also find, on the same basis, that the Appellant's PIPP benefits were not correctly suspended by MPIC effective March 21, 2018. Therefore, pursuant to the authority granted to the Commission under subsection 184(1) of the MPIC Act, the panel determines that the Appellant's PIPP benefits shall be reinstated effective March 21, 2018.

**Disposition:**

Accordingly, the Appellant's appeal is allowed and the Internal Review decision dated December 6, 2018, is therefore rescinded.

The Appellant's PIPP benefits shall therefore be reinstated, effective March 21, 2018, the date when they were wrongfully suspended under paragraph 160(d) of the MPIC Act.

The matter is hereby returned to MPIC's case manager, for a determination as to the amount of those benefits.

The Appellant shall be entitled to interest upon the monies due to him by reason of the foregoing decision, in accordance with section 163 of the MPIC Act.

The Commission shall retain jurisdiction in this matter and if the parties are unable to agree on the amount of compensation, either party may refer this issue back to the Commission for final determination.

Dated at Winnipeg this 6<sup>th</sup> day of December, 2021.

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**JACQUELINE FREEDMAN**

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**LINDA NEWTON**

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**PAUL TAILLEFER**