Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-133

PANEL:	**Ms Laura Diamond, Chairperson** **Ms Sandra Oakley** **Ms Carole Wylie**
APPEARANCES:	**The Appellant, [the Appellant], was represented by Ms Liisa Cheshire of the Claimant Adviser Office;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.**
HEARING DATE:	**April 4, 2006**
ISSUE(S):	**1. Did the Appellant provide a reasonable excuse for failing to apply for a review of the case manager's decision dated September 29, 2003 within the sixty (60) day time period.** **2. Is the Appellant entitled to Income Replacement Indemnity benefits for September 3, 2003 and September 5, 2003.**
RELEVANT SECTIONS:	**Sections 146(2), 150, 151(1), 172, 81(1) and 117(1) of The Manitoba Public Insurance Corporation ('Act')**

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

Reasons For Decision

The Appellant, [text deleted], was injured in a motor vehicle accident on February 17, 2003. She suffered from dizziness, neck pain, pain in the upper part of her back, vision problems, problems with hearing in her right ear and with her jaw on the right side.

The Appellant was in receipt of Income Replacement Indemnity ('IRI') benefits from MPIC and underwent MPIC funded chiropractic treatment as well. She began a graduated return to work program on April 14, 2003, working approximately six (6) hours per day until she returned to work full time (7.5 hours per day) effective June 9, 2003.

MPIC funded regular chiropractic visits which continued throughout the months of June, July and August 2003.

On August 21, 2003, at the request of MPIC, the Appellant attended at [independent chiropractor] for an independent third party chiropractic assessment. [Independent chiropractor] provided MPIC with a report dated September 3, 2003.

The Appellant testified that she experienced an exacerbation of her symptoms following this third party chiropractic examination. Prior to the examination she had been doing well, with the occasional headache or neck pain towards the end of a work day. Following the third party examination, she experienced severe headaches, pain down her neck, nausea and blurred vision.

She testified that following the independent examination, she went directly to the offices of her own chiropractor, [Appellant's chiropractor #1], who had previously advised her that if she had any difficulty following the third party examination he would fit her into his schedule.

The Appellant testified that she received some chiropractic treatment from [Appellant's chiropractor #1] at the [text deleted] following the third party examination. However, she was no longer in receipt of benefits for chiropractic treatment and could not afford to pay for them

herself. Her own chiropractor, [Appellant's chiropractor #1], had indicated a willingness to provide treatment without payment, and these treatments assisted her.

[Appellant's chiropractor #1] had provided a Treatment Plan Report dated July 7, 2003, and provided another one dated August 26, 2003.

However, [Appellant's chiropractor #1] was on vacation for a week at the beginning of September, returning on September 9th, and she did not receive any treatment during this period. During this time, on September 3rd and September 5th, 2003, the Appellant testified that she suffered from severe headaches, neck pain, blurred vision, nausea and excruciating pain in her neck going back into her upper shoulders. She testified that this caused her to be unable to meet the physical demands of her work.

As the Appellant's family doctor was unavailable, she attended, on September 3, 2003, at a walk in clinic, and produced a medical note from [Appellant's doctor #1] of the [text deleted], which stated:

> This is to certify that the above patient attended this clinic for examination & is unable to return to work to-day.

On September 5, 2003, the Appellant experienced similar difficulties, attending at work in the morning, but leaving early in the day. She went to the [hospital] to see a physician. The Urgent Care Physician provided a note which stated:

> Re: [the Appellant]
>
> The above named patient was examined by a physician at the [hospital] on 5/9/03.
>
> Due to medical reasons it is advised that this patient:

a) stay off work/school until 5/9/03 inclusive

The Appellant also submitted receipts for a prescription for medication prescribed by the physician at the [hospital] to ease her muscle spasm. The Appellant was reimbursed by MPIC for the cost of this prescription medication. She was also reimbursed for travel expenses to the [text deleted] walk in clinic, and the [hospital] on those days.

The evidence indicated that the Appellant was compensated for the hours that she was required to be away from work in order to attend the third party examination.

However, the Appellant testified that she was not paid by her employer for the 7.5 hours of work which she missed on each of September 3rd and September 5th, 2003.

The Appellant sought IRI benefits for the hours she missed from work on September 3rd and 5th, 2003, due to the exacerbation of her injuries she suffered as a result of the third party examination.

The Appellant's case manager wrote to her on September 29, 2003 indicating that:

> Based on the available information your inability to maintain employment on September 3, 2003 and September 5, 2003 cannot be supported as being directly related to your motor vehicle accident, resulting in no entitlement for Income Replacement Indemnity for the dates that you missed from work two days in September, 2003.

The Appellant testified that she had a great deal of difficulty obtaining certain documents from MPIC.

The Appellant understood that MPIC would be providing her with a copy of [independent chiropractor]'s third party assessment report. The initial letter from MPIC of July 31, 2003, confirming her appointment with the third party examiner, clearly advised that a copy of the third party assessment report would be made available to her. When she did not receive it, she requested a copy from MPIC, along with a complete copy of her MPIC file. In her attempts to obtain a copy of the reports, the Appellant dealt with her case manager, her case manager's supervisors, MPIC's customer relations department, MPIC's Fair Practices Office, the Ombudsman, and the Minister's Office, requesting a copy of her entire file. In spite of these efforts, she did not receive all of the documents for some time. The Appellant testified that she required these documents in order to make a decision about whether or not to make an Application for Review, and to support any Application for Review she might make. She did not receive all of the documents until January 15 (all medical reports and correspondence) and February 12, 2004.

The Appellant's efforts to obtain these documents, she testified, and the resulting frustration from her lack of success in these attempts, contributed to her failure to file an application for review of her case manager's decision in a timely fashion. In fact, the case manager wrote to the Appellant on February 12, 2004 providing a second copy of the reports and stating:

> On July 31, 2003, the previous case manager clearly advised that a Third Party Assessment report would be made available to you and was never provided until you requested a copy of your file. The writer forwards an apology that the Third Party Assessment report was not sent to you after your examination.

Some time after receiving the package of documents from MPIC, the Appellant submitted an Application for Review of the case manager's decision dated September 29, 2003, on March 22, 2004.

Internal Review Decision

On May 27, 2004, an Internal Review Officer for MPIC reviewed the Appellant's Application for Review of her case manager's decision. The Internal Review Officer found that the Appellant had read and understood that the Application for Review had to be received within the sixty (60) day time period. She found that the fact that the Appellant did not have a copy of her file would not have prevented her from obtaining the appeal form and filing her appeal within the requisite time. Therefore, the Internal Review Officer decided that she would not waive the sixty (60) day time period.

The Internal Review Officer went on to state that, if she had completed a Review of the Appellant's file, she would have upheld the case manager's decision. The Internal Review Officer noted that the Appellant was entitled to IRI for the time that she was unable to continue or hold employment as a result of the motor vehicle accident. Neither the note from [Appellant's doctor #1's] office dated September 3, 2003 or from the [hospital] dated September 5, 2003 indicated that she suffered a functional impairment as a result of her motor vehicle accident that rendered her incapable of working.

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

Submission of the Appellant

On the issue of the Appellant's failure to file an application for review within the prescribed time limit, counsel for the Appellant submitted that, based upon previous decisions of the Commission to which the panel was referred, the Appellant ought to have been granted an extension of time for filing. She reviewed five (5) considerations relative to this question:

1. the actual length of the delay;
2. the reasons for the delay;
3. whether there has been any prejudice resulting from the delay;
4. whether there was any waiver respecting the delay; and
5. any other factors which argue to the justice of the proceedings.

Counsel for the Appellant referred to the Commission's decisions in *AC-05-100*, *AC-02-139*, *AC-03-109* and *AC-03-22* in support of her position.

She submitted that the Appellant had delayed less than six (6) months in filing her Application for Review, after a pattern of submitting all the required documentation for her MPIC file in a timely fashion. Further, she cited the Appellant's frustration with MPIC and her difficulty in obtaining documents from them as one of the primary reasons for the Appellant's delay. At one point her file was misplaced, a new case manager was assigned to her file, and the Appellant made repeated attempts between September 2003 and February 2004, (numbering over twenty-three (23) attempts) to obtain a copy of the third party medical examination report and her full MPIC file. MPIC's behaviour in this regard was in contravention of Section 146(2) and Sections 150 and 151 of the MPIC Act, which entitle the Appellant, in certain circumstances, to receive copies of medical reports and her file. It was only through her repeated efforts with her case managers, their supervisors, the customer relations office and the Fair Practices Office that the Appellant was able to obtain the documentation she required in order to decide whether to file her Application for Review.

> **Corporation to provide copy of medical report**
> **146(2)** Where the corporation obtains a medical report in respect of a medical examination conducted under section 144 the corporation shall, at the request of the person who underwent the medical examination, provide a copy of the medical report to the person and any practitioner designated by the person.

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.

Disclosure of documents to claimant
151(1) A claimant may, on giving reasonable notice to the corporation, examine and copy any document in the corporation's possession respecting the claim and is entitled, on request, to one copy of the document without charge, but the corporation may prescribe a fee for providing more than one copy of the document.

Counsel for the Appellant also submitted that MPIC has not suffered any prejudice as a result of the delay, given that this claim involves payment for two (2) days of IRI and is not a continuing claim.

She submitted that the Appellant had not waived her right to appeal, as her long ordeal with MPIC and her efforts to obtain information had been well documented. In fact, the Appellant testified that she had received a verbal assurance, from [text deleted], Manager, RCM, that the sixty (60) day time limits would not be applied to the Appellant until she received all the documentation that she had requested.

Finally, counsel for the Appellant submitted that the Appellant had an absolute right to full information, which she did not receive, in order to decide whether to file an appeal. The Appellant did not fully understand that the time limits would run, in spite of MPIC's failure to provide her with what she had requested. As such, all of the circumstances support the extension of time in this case.

On the issue of the Appellant's relapse of her condition on September 3rd and September 5th, 2003, counsel for the Appellant reviewed the definition of "relapse" set out in Section 117(1)(a) of the Act. She submitted that the Appellant had suffered a relapse of her symptoms after the third party examination of August 21, 2003. [Appellant's chiropractor #1's] report of September 28, 2003 sets out his assessment of the Appellant's condition both prior to the third party examination and immediately thereafter. This report contains more relevant and timely information than [Appellant's chiropractor #1's] letter of July 2004 and should be more heavily relied upon, it was submitted.

Counsel for the Appellant submitted, that based upon previous decisions of the Commission in *AC-03-153, AC-03-20* and *AC-97-93*, the Appellant's condition fit within the definition of "relapse", as a deterioration in health after a temporary improvement. With treatment, the Appellant was able to work despite this relapse, but because MPIC had terminated the payment of her chiropractic treatments at the end of August 2003, the Appellant was not able to work, without this chiropractic support, on September 3rd and September 5th, 2003.

After the treatment was resumed, the Appellant did not miss any further work due to this relapse. Accordingly, she should be entitled to be paid IRI benefits for a total of fifteen (15) hours or 7.5 hours for each of the days when she was unable to work as a result of the relapse.

Submission of MPIC

Counsel for MPIC submitted that in reviewing the length of delay in this case, the delay of one hundred and ten (110) days was almost double the statutory time period of sixty (60) days.

Counsel for MPIC referred to a decision of the Commission in *AC-04-13* as support for his argument that the Appellant did not have a reasonable excuse for failing to apply for a review within the statutory sixty (60) day time limit.

Counsel submitted that although the Appellant argued that the reason for her delay was the failure to obtain a complete copy of her claim file, she did not even request the copy of the file until after the sixty (60) day time period had expired. As for the report of the independent examiner, counsel for MPIC stated that the reality is that this report had no bearing on, or relevance to, the decision regarding the Appellant's IRI claim.

Counsel for MPIC agreed that there was no prejudice to MPIC as a result of the nominal claim for two (2) days of IRI.

He took the position that MPIC had not waived the time limits, as any such waiver must be clear and unequivocal, and any conversations that the Appellant had with [text deleted] did not meet this requirement.

Counsel for MPIC also argued that the Appellant had already been overcompensated in regard to the amount she received for her absence from work on August 21, 2003 in order to attend at the third party chiropractic examination and that her current claim represents less than [text deleted] dollars. As such this is not a case where fundamental justice demands that an extension be granted.

With respect to the IRI entitlement issue, counsel for MPIC submitted that there is nothing in either note, from the two different facilities, certifying that the Appellant was medically unable

to work on September 3rd and September 5th, 2003, indicating what, if any, examinations or assessment took place, what medical conditions justified the absences from work, what treatment if any was provided, or what the causes were of the disabling medical condition.

The brief typewritten report and medical note provided by [Appellant's chiropractor #1] certifying that the Appellant was unable to work on the dates indicated due to accident related headaches is not sufficient to meet the onus upon the Appellant of showing that her absence from work on those days was as a result of motor vehicle related symptoms.

These documents were prepared by a chiropractor who did not see the Appellant during the entire period commencing six (6) days prior to the first absence and continuing until three (3) days after the second. In fact he had seen her only once during the twelve (12) days prior to the first absence.

The medical note was prepared ten (10) months after the fact by a practitioner who was "away from the office" at the relevant times and who did not refer to any clinical notes.

Accordingly, counsel for MPIC submitted that this evidence falls far short of establishing an entitlement to IRI on a balance of probabilities and that the Appellant's appeal should therefore, be dismissed.

Discussion

1. Did the Appellant provide a reasonable excuse for failing to apply for a review of the case manager's decision dated September 29, 2003 within the sixty (60) day time period?

Section 172(1) and (2) of the MPIC Act provide as follows:

> **Application for review of claim by corporation**
> **172(1)** A claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.
> Corporation may extend time
> **172(2)** The corporation may extend the time set out in subsection (1) if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within that time.

The Commission is satisfied that the Appellant had a reasonable excuse for failing to file a timely Application for Review within the sixty (60) day time period following the case manager's decision of September 29, 2003.

The panel agrees with counsel for the Appellant and counsel for MPIC that there is no prejudice to MPIC resulting from the Appellant's delay in filing her Application for Review. Nor is the length of the delay overwhelming, having regard to the circumstances.

The Appellant has provided reasons for the delay in filing which the panel finds particularly compelling. Although counsel for MPIC argued that the third party assessment report which the Appellant was seeking was not relevant to the issues upon review, the Appellant had no way of knowing whether or not this report would have relevance, until she was able to receive and review it. The Appellant made it very clear to MPIC that she wanted to see a copy of the report and it was also clear that she was entitled to receive it.

The Appellant clearly expressed her feelings of frustration with the process and with the difficulties in obtaining both the assessment report and a copy of her file from MPIC. The Corporation appears to have lost her file at one point, and a change in case managers also contributed to this frustration.

However, the Appellant continued to pursue the matter with her case managers, their supervisors, the customer relations department and the fair practices office. Throughout this process, MPIC failed to give the Appellant the necessary support for her to be able to advocate on her behalf and to provide her with the documents she required in order to make a decision whether to seek a review of the case manager's decision and/or to provide support for her claim, if necessary.

The panel is of the view that while MPIC did not clearly and expressly waive the time limits for the Appellant to file her Application for Review, neither did the Appellant waive her right to proceed with her Application. We are of the view that there was sufficient confusion and frustration on the part of the Appellant, in spite of her efforts to receive information, to explain her delay. We are also of the view that in this case, the circumstances argue to the justice of proceeding with the Appellant's appeal, and extending the time period for applying for an Internal Review in this case.

In summary, the Commission finds that the Appellant has established, on a balance of probabilities, that she had valid and compelling reasons for the delay in filing an Application for Review, and that MPIC was not prejudiced by the delay. For these reasons, the Commission therefore grants the Appellant's extension of time to file her Application for Review, in accordance with Section 172 of the Act.

2. Is the Appellant entitled to Income Replacement Indemnity benefits for September 3, 2003 and September 5, 2003?

To qualify for entitlement under the Personal Injury Protection Plan the Appellant's injuries must meet the definition of bodily injury caused by an automobile under Section 70(1) and 71(1) of the Act:

> **Definitions**
> **70(1)** In this Part,
> **"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 performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile;
>
> **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.

Entitlement to IRI arises when a victim, as a result of the accident, is unable to continue full-time employment under Section 81(1) (or part-time employment under Section 83(1)):

> **Entitlement to I.R.I.**
> **81(1)** A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:
> (a) he or she is unable to continue the full-time employment;
>
> **Entitlement to I.R.I. after relapse**
> **117(1)** If a victim suffers a relapse of the bodily injury within two years
> (a) after the end of the last period for which the victim received an income replacement indemnity, other than an income replacement indemnity under section 115 or 116; or

The onus is on the Appellant to establish, on a balance of probabilities, that she was unable to work on September 3rd and September 5th, 2003 as a result of the motor vehicle accident of February 17, 2003.

In reviewing the Appellant's entitlement to IRI benefits, the panel has carefully reviewed the medical reports provided. We have reviewed the reports provided by the independent chiropractor, [independent chiropractor], [MPIC's chiropractor], [text deleted], [Appellant's doctor #1] of the [text deleted], and from the [hospital] physician. We have also reviewed the evidence of the Appellant's treating chiropractor, [text deleted].

[Independent chiropractor], the independent chiropractic examiner retained by MPIC, provided a report dated September 3, 2003. [Independent chiropractor] conducted a thorough assessment and review of the Appellant's history. He noted:

> [The Appellant.] indicates that she is slowly improving with treatment from [Appellant's chiropractor #1]. [The Appellant] states that she did have a setback in June 2003 as she attended [Appellant's chiropractor #2] for active release treatment to her neck and these treatments discontinued, as they seem to worsen her neck pain and her headaches.
>
> Presently [the Appellant] continues to have neck pain, headaches, blurred vision and dizziness. These are subjective symptoms that have been consistent since the outset of her treatment and continued to be documented in [Appellant's chiropractor #1's] reports to MPI pertaining to examination findings on February 20, March 20, and July 3 of 2003.
>
> My exam findings are consistent with [Appellant's chiropractor #1's] exam findings and his reports to MPI on February 20, March 20, and July 3 of 2003. Further, [the Appellant] has a perceived level of disability of severity. Return to work progress report on May 26, 2003 indicates that [the Appellant] does meet the requirements of her job related duties.
>
> Over the course of six months of treatment, I feel that [the Appellant] has made very little improvement both subjectively and objectively and therefore I consider her present prognosis to be fair to poor.

[Independent chiropractor] recommended that the Appellant continue to see [Appellant's chiropractor #1] at a frequency of one time a week, along with remedial exercise program. He recommended:

> To best address [the Appellant's] postural and faulty movement patterns, she will need to undergo a six week trial of an active rehabilitation program that would include the appropriate blend of cardiovascular exercise, postural retraining, as well as stretching and

> strengthening exercises. It is reasonable to expect that there may be a slight flare-up in her present condition and that certainly, a once a week visit to see [Appellant's chiropractor #1] would be an appropriate complement of care to enhance further recovery and restoration of function. Once she has completed her active rehabilitation, which should occur over a period of six weeks, I feel that she will have reached overall maximum therapeutic benefit and should subsequently be discharged.
>
> I have no other information that I deem germane to the ongoing handling of this case. I have not communicated my findings to this patient. If you have any further questions or require clarification regarding my report, do not hesitate to contact me.

[Independent chiropractor's] report was reviewed by [text deleted],chiropractic consultant to MPIC's Health Care Services. [MPIC's doctor #1] agreed with [independent chiropractor's] recommendations.

> [Independent chiropractor's] recommendations seem reasonable, although I have reservations about [the Appellant's] willingness to pursue a course of active care through the inevitable exacerbation of symptoms. This should be explored with her prior to institution of such a program.
>
> I think that this should suffice to progress her to maximum medical improvement. It is also noted that this course starting from the present time would be relatively consistent with the recommendations of [Appellant's chiropractor #1] to discharge around December 2003.

The panel was not referred to anything in the materials on file to indicate that MPIC followed-up and pursued the recommendations made by [Appellant's chiropractor #1] and [MPIC's doctor #1] for a six (6) week trial of an active rehabilitation program with a once per week visit to [Appellant's chiropractor #1], as an appropriate complement of care.

While we are aware that the question of the Appellant's treatment or further treatment is not an issue before us in this appeal, the panel is puzzled by the lack of follow up regarding the treatment recommendations made by MPIC's own consultants.

The panel has also reviewed the notes provided by [Appellant's doctor #1] of the [text deleted] and of the [hospital] physician. These reports, while certifying the Appellant's inability to attend at work due to medical reasons on September 3rd and September 5th, 2003, do not provide any information regarding the reason for the absence. The Appellant maintained that this information was omitted from the notes due to privacy concerns, but that MPIC possessed consent forms executed by the Appellant which would have allowed it to follow up with these doctors to obtain the relevant information. The Appellant argued that MPIC had a duty to follow up on this investigation. On the other hand, MPIC argued that the Appellant had over two (2) years and the Claimant Adviser Office representing her had almost one (1) year to obtain better medical reports which addressed the issue at hand.

In any event, these reports do not establish a connection between the Appellant's inability to work on September 3rd and September 5th, 2003 and the motor vehicle accident.

The panel has closely reviewed the reports provided by [Appellant's chiropractor #1]. In particular, we have reviewed the Treatment Plan Report dated July 7, 2003 (following examination dated June 27, 2003), the Treatment Plan Report dated August 29, 2003 (following examination dated August 22, 2003), the report dated September 23, 2003 and the form dated July 16, 2004.

The report based upon the August 22, 2003 examination, which occurred the day after the Appellant's August 21st visit for the third party chiropractic assessment, lists symptoms which are very similar to those listed in [Appellant's chiropractor #1's] July 7, 2003 report. He makes note of some improvement in the Appellant's cervical range of motion:

> ↓cervical rom (improving).

However, [Appellant's chiropractor #1] does not identify any injury or exacerbation resulting from the third party chiropractic assessment of August 21, 2003, in this report. Although the Appellant testified that she was in so much pain from the visit to [independent chiropractor] that she had to immediately attend upon [Appellant's chiropractor #1] for treatment that same day, [Appellant's chiropractor #1] makes no mention of this in the August 29, 2003 report.

The next report from [Appellant's chiropractor #1] is a brief narrative dated September 23, 2003. In this report he indicates that following her motor vehicle accident [the Appellant] experienced a severe whiplash injury, followed the prescribed care plan and demonstrated steady ongoing progress. He then documents the Appellant's attendance at a third party examination on August 21, 2003 and states:

> . . . On August 21, 2003 [the Appellant] attended the third party examination.
>
> Following the independent [the Appellant] attended our office with a severe headache, neck and arm pain, cervical and upper thoracic paraspinal muscle hypertonicity were present.
>
> Prior to the independent examination, [the Appellant's] condition was improving and did not present with the above signs or symptoms.
>
> [The Appellant's] care plan was augmented to address the exacerbation of symptoms . . .

This report does not contain a thorough, objective analysis of the connection between the exacerbation symptoms reported and the motor vehicle accident. Further, this report makes no mention of the Appellant's ability or inability to work on the dates in question, September 3rd and 5th, 2003, as a result of these symptoms or the motor vehicle accident.

[Appellant's chiropractor #1] also completed a "sick form" from [text deleted] dated July 16, 2004. This form indicates that the Appellant:

> was required to be absent from duty on September 3rd and September 5th 2003 due to illness or injury. The diagnosis provided is cervicogenic headaches as a result of mva.

This report provides no narrative analysis, and was written approximately ten (10) months following September 3rd and 5th, 2003. In fact, the Appellant's representative even submitted that [Appellant's chiropractor #1's] letter of September 23, 2003 provided more relevant and timely information than the July 16, 2004 letter, and should be relied upon more heavily.

Having regard to this review of the medical evidence, the panel is of the view that the Appellant has not provided sufficient evidence to meet the onus upon her of establishing that the symptoms which prevented her from attending at work on September 3rd and September 5th, 2003 were a result of the motor vehicle accident.

The evidence from [independent chiropractor] and [MPIC's chiropractor] does not touch on the issue before us regarding the Appellant's entitlement to IRI benefits for these dates.

The evidence from [Appellant's doctor #1] of the [text deleted] and from the [hospital] does not provide any assessment of the reasons why the Appellant was unable to work on the days in question, and therefore does not assist us.

[Appellant's chiropractor #1's] reports do not contain a thorough objective analysis of a connection between the exacerbation of symptoms reported on these dates and the motor vehicle accident. The sick form dated July 16, 2004 provides no narrative and was written

approximately ten (10) months following the dates in question. The narrative report dated September 23, 2003 makes no mention of [the Appellant's] ability or inability to work on the dates in question, September 3rd and September 5th, 2003, or the reasons for it.

Nor did [Appellant's chiropractor #1] examine the Appellant on the dates in question, as the evidence was clear that he was on vacation at the relevant time, such that the Appellant did not attend again at his office for chiropractic treatment until approximately September 9, 2003.

Although the Appellant has testified and appears to be of the firm view that the motor vehicle accident and the treatment which followed, particularly the third party chiropractic examination, were the cause of her inability to work on the days in question, the Appellant has not provided sufficient medical evidence, on a balance of probabilities, to establish a causal connection between the motor vehicle accident and her inability to work on the days in question.

For these reasons, the Appellant's appeal is dismissed, and the decision of the Internal Review Officer dated May 27, 2004, regarding the Appellant's ineligibility to receive IRI benefits for September 3, 2003 and September 5, 2003, is hereby confirmed.

Dated at Winnipeg this 2nd day of May, 2006.

LAURA DIAMOND

SANDRA OAKLEY

CAROLE WYLIE