

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-160**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Diane Beresford
Mr. Les Marks

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Kirk Kirby.

HEARING DATES: March 8, 2010 and June 28, 2010

ISSUE(S):

1. Whether the Appellant's benefits were properly terminated pursuant to Section 160(a) of the MPIC Act.
2. Whether the Appellants' benefits were properly terminated pursuant to Section 110(1)(a) of the MPIC Act.
3. Whether MPIC is entitled to repayment of overpayment.

RELEVANT SECTIONS: Sections 110(1)(a), 160(a) and 189 of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on March 19, 2002. At the time of the accident, the Appellant was a self-employed [text deleted]. She was in receipt of income replacement indemnity ("IRI") benefits from MPIC arising from a previous motor vehicle accident on December 15, 1998. She was working to the extent that she was able, and her wages were being supplemented with IRI top-up benefits from MPIC. As a result of the injuries which the Appellant sustained in the motor vehicle accident of March 19, 2002, she was unable to return to work in any capacity.

Throughout the course of her claim with MPIC, the Appellant provided her case manager with updates regarding her injuries and functional abilities. On March 17, 2005, the Appellant completed a “Claimant’s Reported Level of Function” form, which reported the Appellant’s function as follows:

- **Walking** – the Appellant indicated that her maximum tolerance for walking was 0 to 15 minutes.
- **Standing** – the Appellant’s tolerance for standing was reported to be 0 to 15 minutes.
- **Bending** – the Appellant reported limited bending.
- **Squatting** – the Appellant indicated that she could not squat.
- **Sitting** – the Appellant’s tolerance for sitting was reported to be 15 to 30 minutes.
- **Driving** - the Appellant indicated that her tolerance for driving was 0 to 30 minutes.
- **Lifting** – the Appellant’s tolerance for lifting was reported as 0 to 5 pounds.
- **Overhead Lifting** – the Appellant reported that her tolerance for overhead lifting was 0 to 5 pounds.
- **Pushing & Pulling** – the Appellant’s tolerance for pushing and pulling was reported to be 0 – 10 pounds.
- **Repetitive Motion** – the Appellant’s tolerance repetitive motion was indicated at 0 to 15 minutes.
- **Twisting** – The Appellant indicated that she could not twist her torso left or right.
- **Difficulty Moving Neck** – the Appellant indicated that she had difficulty moving her neck to the right, left, up and down.
- **Miscellaneous** - the Appellant reported difficulty with climbing ladders, crawling, running, jumping and walking on uneven surfaces.

On September 1, 2005, the Appellant met with her case manager to provide an update regarding her status. During that meeting, the case manager completed a “Claimant’s Reported Level of Function” form which the Appellant signed. The form reported the Appellant’s level of function as follows:

- **Walking** – the Appellant reported her tolerance for walking at 0 to 15 minutes. She further indicated that it was more like 5 minutes, then her “back screams” and she struggles with her left leg as it often feels like its (sic) just not there.
- **Standing** – the Appellant reported her tolerance for standing at 0 to 15 minutes. She further indicated that after 5 minutes maximum the bottoms of her feet tingle and burn and she must shift from her right to her left foot, and then her back hurts.
- **Bending** – the Appellant reported that she was limited with bending. She would often use her feet to pick up objects that fall. She was limited to bending 90° then her back limits any further bending.
- **Squatting** – the Appellant reported that she could not squat. She would use a stool to sit on before squatting.

- **Sitting** – the Appellant reported a tolerance of 30 to 60 minutes for sitting. However, she must shift frequently. If she is sitting reclined with her legs elevated her tolerance increases to 1 to 2 hours.
- **Driving** - the Appellant reported her tolerance for driving was 0 to 30 minutes, and 30 minutes was her maximum due to back pain.
- **Lifting** – the Appellant indicated that she could lift 0 to 5 pounds. When grocery shopping she uses the parcel pick-up service. The groceries are then transferred from the vehicle by her husband. The Appellant also indicated that she would only shop for specific items like 1 litre of milk, bread and meat.
- **Overhead Lifting** – the Appellant indicated no difficulty in overhead lifting with her left arm and a tolerance of 0 to 5 pounds with her right arm.
- **Pushing & Pulling** – the Appellant indicated that she could push 0 – 10 pounds. Further she noted that she would use automatic doors when available or will use her body to open (push) doors or her leg to (pull) doors open due to back limitations.
- **Repetitive Motion** – the Appellant’s reported tolerance for repetitive motion was 0 to 15 minutes, although she did not do repetitive activity due to her limitations.
- **Twisting** – The Appellant reported that she could twist her torso left and right but was extremely limited.
- **Difficulty Moving Neck** – the Appellant reported limitations moving her neck to the right, to the left, and up. She noted that movement was stiff and rigid and she must go slowly.
- **Dizziness** – the Appellant reported that when she bends down she must hold onto something when getting up.
- **Miscellaneous** - the Appellant reported that climbing ladders, crawling, running and jumping were impossible due to pain/physical limitations.

On September 1, 2005, the Appellant also signed a statement which had been typed by the case manager. In that statement, the Appellant advised that:

. . . On days when I do have appointments or I am going out with friends, I must get up 2 hours before I have to be somewhere as it take (sic) me a long time to get ready. I have to put my makeup on, sit down, dry my hair, sit down, brush my teeth, sit down etc. So if get up at 9 a.m., I won’t be anywhere before 11 a.m. When I’m out and about, my friend and I may go to [text deleted] or to [text deleted] to pick up some craft supplies. My friend will carry everything, and lift all bags. We try and run all errands in one area of the City to avoid excess driving. After shopping, if I haven’t done too much, my friend may come back to my place for a coffee. If not, I drive her home, and the purchases for the day stay in the car until my husband comes home. Wednesday’s (sic) at 11 a.m. I have appointments with [the Appellant’s Doctor #1], if I have further errands that day, and I’m feeling good, I’ll do it. If I feel crappy, I will just go straight home. I very seldom travel alone. I often bring my friend [text deleted] with me when I go out and about.

In a December 23, 2005 Level of Function form, the Appellant reported the following limitations:

- **Walking** – the Appellant indicated that her tolerance for walking was from 0 to 30 minutes depending on her level of pain. Further the Appellant reported that my legs sometimes “disappear” and I don’t feel them or my feet tingle & burn or feel like I’m walking on shards of glass or ice. The pain level in my lower back increases significantly.
- **Lifting** – the Appellant reported that she could lift between 0 to 5 pounds. Her right shoulder pain increases and if it’s too heavy it “pulls” her lower back.
- **Standing** – the Appellant reported that her tolerance for standing was between 0 to 15 minutes. When asked to explain what prevented her from standing any more she indicated that it was the same as walking – either her legs give out or her feet tingle, burn, etc. Further the pain in her lower back feels concentrated and increases.
- **Overhead Lifting** – the Appellant reported her tolerance for overhead lifting at 0 to 5 pounds. When asked to explain what prevents her from overhead lifting any more she noted that “when attempting to lift overhead my neck pain intensifies when I try to put my head back to lift overhead”.
- **Bending** – the Appellant reported limited bending. She explains that when she bends more than noted, pain shoots from her lower back down her legs more the right leg now, which sometimes alternates with the left. Pain also circles around her hips & the cheeks of her buttocks.
- **Pushing & Pulling** – the Appellant reported her tolerance for pushing at 0 to 10 pounds. When asked to explain what happens when she pushes/pulls more than reported she noted that when she tries “to use her legs for instance – opening a heavy door – I will pull it open with both hands then use her legs to push it open.”
- **Squatting** – the Appellant indicated that she could not squat. When asked to explain what happens if she squats more than she had reported, the Appellant indicated that she would have “pain everywhere, dizzy upon standing” and would “need assistance getting back up”.
- **Sitting** – the Appellant indicated that her tolerance for sitting was between 10 to 60 minutes depending on what position she was in, reclining was the best. The Appellant further reported that when trying to sit too long her lower back feels like her spine is being shoved up, obviously increasing her pain level.
- **Repetitive Motion** – the Appellant indicated her tolerance at 0 to 15 minutes for repetitive motion which would increase the pain in her right shoulder. The Appellant further noted that her right rotator cuff does not like repetitive motion at all and she is right handed.
- **Driving** - the Appellant reported her tolerance for driving at 0 to 30 minutes. She indicated that her limited ability to drive was due to bumps or uneven surfaces which made the pain in her lower back increase. Between the sitting and the jostling around she could not drive for very long.
- **Twisting** – the Appellant indicated that twisting was very limited because of her very limited range of motion.
- **Difficulty Moving Neck** – the Appellant indicated difficulty moving her neck to the right, left, up and down due to a poor range of motion for all of these functions.
- **Dizziness** – the Appellant reported dizziness when she stood up from a sitting position.

- **Miscellaneous** - the Appellant reported limitations with climbing ladders, crawling, running and jumping.

Due to the duration of the Appellant's ongoing injuries and the apparent lack of progress in her recovery, despite significant efforts by numerous caregivers, an investigation of her functional abilities was carried out. Arrangements were made by MPIC's case manager to conduct an investigation into the Appellant's level of activity. That investigation is documented in the [surveillance company] reports dated June 24, 2005 and December 16, 2005.

The [surveillance company] report dated June 24, 2005 summarized the surveillance conducted on the Appellant on June 16 and 17, 2005. On June 17, 2005, the Appellant was observed leaving her residence in her vehicle, attending at a [text deleted] grocery store and grocery shopping at [text deleted] for almost 1 hour. The Appellant was then observed returning home, unloading her groceries from her vehicle and carrying the groceries into her home.

The [surveillance company] report dated December 16, 2005 summarizes the surveillance conducted on the Appellant on December 7 and 12, 2005. On December 7, 2005, the Appellant was observed leaving her residence and attending a scheduled appointment at the [Hospital]. The Appellant was then observed returning to her residence after the appointment. Later that day, the Appellant again departed her residence, picked up her daughter and then proceeded to the [mall]. The Appellant and her daughter spent more than 2 hours shopping inside the mall, visiting various clothing stores, the food court and [text deleted]. The Appellant was also observed attending [text deleted] and then her and her daughter proceeded to the [text deleted] store, also on the outer perimeter of the [mall], where the 2 shopped for approximately 45 minutes. The Appellant then drove her daughter home and then drove herself home.

On December 12, 2005, the Appellant was observed leaving her residence at 10:58 a.m., driving her vehicle, picking up another adult female before going shopping at various retail outlets. The Appellant then attended at the [text deleted], a grocery store, an apartment building, returned to the [text deleted] and then dropped her female passenger off and then returned home, arriving at 3:36 p.m. The Appellant was then observed departing home again at 5:52 p.m. as a passenger in a white pick-up truck driven by an older male. The Appellant was observed stopping as a [text deleted] and then proceeding to her daughter's apartment building. The Appellant and her daughter are observed walking to a [text deleted] and then returning to the apartment building again. The Appellant and the older male are then seen leaving the apartment building and returning home at 9:00 p.m.

The investigative material was provided to MPIC's Health Care Services team for a comprehensive review. [MPIC's Doctor] provided an interdepartmental memorandum dated January 4, 2006 setting out his review of the Appellant's file and the surveillance material. In his memorandum, [MPIC's Doctor] notes that:

- The surveillance video tape does not demonstrate any obvious permanent impairment in the Appellant's neck or shoulder region in relationship to the collision in question.
- The surveillance video tape indicates that the Appellant's range of motion has largely returned to normal. There are no significant abnormal movement patterns observed.
- The surveillance video tape does not demonstrate that the Appellant has persistent guarded movements.
- The surveillance video tape shows that the Appellant's shoulder flexion has improved.
- Based on the surveillance video tape, the Appellant was not limited in grocery shopping.
- The Appellant was able to squat.
- The video tape surveillance did not indicate any easily discernable pain behaviour despite the Appellant performing a wide variety of physical tasks.
- The surveillance video tape indicates that the Appellant's walking capability has improved since her reported level of function form of March 17, 2005.
- The Appellant did not appear to have a significant limitation in bending on the surveillance video tape.
- The Appellant could squat based on the surveillance video tape.
- Based on a balance of probabilities, the Appellant could lift more than 0 to 5 pounds.

- The surveillance video tape indicates that on the balance of probabilities the Appellant could push more than 0 to 10 pounds.
- The surveillance video tape indicated essentially a full cervical range of motion of the Appellant's neck, with the exception of extension.

When comparing the video surveillance tapes to the Appellant's September 1, 2005 Reported Level of Function form, [MPIC's Doctor] noted the following:

- The Appellant was able to walk longer than the reported 5 minutes in the surveillance video tape while shopping.
- The video tape indicated that the Appellant could squat despite her report that she could not squat.
- The surveillance video tape indicated that the Appellant could lift more than the 0 to 5 pounds that she had indicated on the September 1, 2005 Reported Level of Function form.
- In her statement dated September 1, 2005, the Appellant stated that when she goes to [text deleted] or other areas in the retail sector, she will have her friend carry everything and lift all bags. However, the video tape surveillance indicated that this self-report was not reliable.

[MPIC's Doctor] concluded that based on the medical information he had reviewed, the Appellant's self-report of function and the surveillance video tape, in his opinion there was a significant discrepancy between the Appellant's report of her function and the observed function in the surveillance video tape. There was also an inconsistency between the Appellant's observed function in the surveillance video tape and the function described by her various health care providers.

On April 6, 2006, MPIC's case manager wrote to the Appellant to advise her of the termination of her Personal Injury Protection Plan ("PIPP") benefits for knowingly providing MPIC with false or inaccurate information concerning the extent of her injuries and her level of function in contravention of Section 160(a) of the MPIC Act. The case manager found that the Appellant's self-reporting of her functional abilities was not reliable and that there was a significant discrepancy between her report of her function and the observed function on the surveillance

video tape. The Appellant had presented herself to her caregivers and to MPIC as a person with severe limitations arising from injuries suffered in her two motor vehicle accidents. However, outside a clinical setting, she was observed to function with no identifiable limitation or restriction. The case manager found that the level of activity demonstrated on the video tape surveillance contradicted the information that the Appellant had provided to MPIC in the level of function forms and to her caregivers. As a result, the case manager terminated the Appellant's entitlement to PIPP benefits in accordance with Section 160(a) of the MPIC Act.

Alternatively, the case manager found that having reviewed her full file in light of the discrepancies uncovered during the investigation, the Appellant manifested the required functional capabilities to return to work as an [text deleted]. As a result, the case manager determined that had the Appellant's PIPP benefits not been terminated under Section 160(a), her entitlement to IRI benefits would have ended in accordance with Section 110(1)(a) of the MPIC Act.

In addition to the termination of the Appellant's entitlement to PIPP benefits, the case manager found that the Appellant was also responsible for reimbursing MPIC for the excess payment of benefits which she received as a result of her failure to notify and provide accurate information regarding her functional ability. The case manager advised that the Appellant was responsible for reimbursing MPIC the amount of \$18,650.79 which was the amount of monies paid to her subsequent to her September 1, 2005 self-report statement of her functional abilities. Pursuant to Section 189 of the MPIC Act, the Appellant was required to repay this amount to MPIC.

The Appellant sought an Internal Review of the case manager's decision of April 6, 2006. The Internal Review Decision of August 25, 2006 dismissed the Appellant's Application for Review

and confirmed the case manager's decision. The Internal Review Officer found that the Appellant did knowingly provide false information to MPIC in contravention of Section 160(a) of the MPIC Act. She found that the surveillance of the Appellant and her function on December 7, 2005 was greatly increased from what the Appellant had reported on September 1 and December 23, 2005 to MPIC. The Internal Review Officer found that that contradiction alone justified a termination of the Appellant's PIPP benefits as it was a breach of Section 160(a) of the MPIC Act. The Internal Review Officer also confirmed that the Appellant's IRI benefits were correctly terminated pursuant to Section 110(1)(a) of the MPIC Act and accordingly Section 110(1)(a) could have been applied to terminate her IRI benefits. The Internal Review Officer also found that MPIC was entitled to reimbursement for the excess payment of \$18,650.79 pursuant to Section 189(1) of the MPIC Act.

The Appellant has appealed that decision to this Commission. The issues which require determination in this appeal are:

1. whether the Appellant's PIPP benefits were properly terminated pursuant to Section 160(a) of the MPIC Act;
2. whether the Appellant's IRI benefits were properly terminated pursuant to Section 110(1)(a) of the MPIC Act; and
3. whether MPIC is entitled to reimbursement of the overpayment to the Appellant.

Relevant Legislation:

Events that end entitlement to I.R.I.

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

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

Corporation may refuse or terminate compensation

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

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

Corporation to be reimbursed for excess payment

[189\(1\)](#) Subject to sections 153 (payment before decision by corporation), 190 and 191, a person who receives an amount under this Part as an indemnity or a reimbursement of an expense to which the person is not entitled, or which exceeds the amount to which he or she is entitled, shall reimburse the corporation for the amount to which he or she is not entitled.

Appellant's Submission:

The Appellant submits that she did not provide false or misleading information to MPIC. She advises that she was encouraged by her caregivers to go out and do what she could. Additionally, she had good days and bad days and the video tape surveillance relied upon by MPIC only shows her on her good days, when she did leave the house to run errands. The Appellant contends that the movements on the video tape surveillance do not constitute any significant amount of time. Prior to her motor vehicle accidents she was a very active person, but she no longer is able to do any of the things she could do previously. The Appellant maintains that there was no video surveillance of her on the days when she was using her cane. Overall, she insists that the video tapes do not portray an accurate picture of her functional abilities.

The Appellant claims that the shopping trip to [text deleted] on her own was the one and only time she has done any major grocery shopping since her accidents. She used the parcel pick-up

service and only had light bags. She carried the bags into her home making a few trips, carrying them with her left hand and arm. When she was video taped bending, she was holding onto the cart and had extreme trouble getting back up. The Appellant maintains that pushing the shopping cart allowed her to hang onto something and it has wheels to move easily. With regards to lifting, the Appellant claims that she only lifts light things, leaving the heavier items for her husband. She argues that the range of motion and flexion reported by [MPIC's Doctor] are questionable, since he was not anywhere near her to take accurate measurements of her movements.

The Appellant insists that the squatting was done carefully and guarded. When she was pregnant, she learned that this took the pressure off the low back area. So, if she walks too long and there is nowhere to sit and she feels the need to relieve her back pain, then she will squat, doing so very carefully.

The Appellant also argues that her medication was changed in the summer of 2005 and this improved her condition. She contends that her situation improved for a period of time. However, if she has overdone something or exerted too much effort during any given day, then she will be in extreme pain the next day, basically housebound.

The Appellant submits that [MPIC's Doctor] does not know what the job demands of an [text deleted] are. Therefore she maintains that he cannot comment on her ability to do that job. She contends that when she doesn't do repetitive motions, then she doesn't have difficulty with her arm. Further, being able to use her arm and being able to turn her head was a result of the treatment with [Appellant's Doctor #2]. His treatments helped improve her condition.

The Appellant also argues that there is no sound on the video tapes and most of the video tape surveillance does not show her face. Therefore, she contends that you are unable to see the expressions on her face and her pain behaviours during these outings.

In conclusion, the Appellant submits that she has tried to be as forthcoming, truthful and honest with MPIC as possible. She argues that she continues to be in pain and that she is truly suffering with her motor vehicle accident-related injuries. She continues to attend numerous specialists to find some relief for her pain. She maintains that she continues to suffer from her injuries and accordingly she should continue to receive benefits.

MPIC's Submission:

Counsel for MPIC submits that the Internal Review Decision was appropriate in the circumstances of this case and that it should be confirmed. He argues that the Appellant had many opportunities to report her increased functionality to her case manager, yet she continued to under-report her abilities so as to remain in receipt of benefits from MPIC. Counsel for MPIC maintains that the Appellant portrayed herself in a very limited fashion to her caregivers and to MPIC, however the video tape surveillance demonstrates that she was actually much more functional than she reported.

The video tape surveillance of June 17, 2005, of the Appellant's shopping trip to [text deleted], shows the Appellant shopping for at least one hour. During that time she was observed bending, walking, lifting and carrying, all without any discernable pain behaviours. With regards to the December 7, 2005 shopping trip to [mall], counsel for MPIC maintains that the video tape surveillance shows the Appellant walking throughout the mall, again with no easily discernable pain behaviours. With regards to her reported level of function, counsel for MPIC maintains that

despite the Appellants' report that she could not squat, she clearly squats on the video tape. Despite her report that her neck movements are stiff, she has full range of motion in her neck throughout the video tape surveillance and no pain behaviours. Further, despite the Appellant's report that she pushes doors open with her body, on the video tape surveillance, she does push doors open with her arms.

Counsel for MPIC contends that the Appellant presented herself to caregivers and to MPIC as a person with severe limitations arising from injuries suffered in the motor vehicle accidents. Yet when she was observed outside a clinical setting, she functioned with no identifiable limitations or restrictions. Counsel for MPIC argues that there is a stark contrast between the observed activity on the video tape surveillance and the Appellant's self-report of her functional ability. Comparing the investigation of her functional abilities outside a clinical setting with her reported functional ability to both her caregivers and to MPIC, there is no other conclusion to reach other than the Appellant's self-reporting is "not reliable". There were significant discrepancies between the Appellant's report of her function and the observed function on the video tape surveillance. As a result, counsel for MPIC submits that there was no other alternative but to terminate the Appellant's PIPP benefits pursuant to Section 160(a) of the MPIC Act.

With respect to the application of Section 189 of the MPIC Act, counsel for MPIC argues that repayment is required in the circumstances of this case. Counsel for MPIC maintains that the Appellant received benefits to which she was not entitled and therefore pursuant to Subsection 189(1) of the MPIC Act, she is required to reimburse MPIC for the amount to which she was not entitled. Further, counsel for MPIC submits that the Corporation requires a reasonable length of time to receive, process and consider the video tape evidence and to determine whether benefits should be terminated. Therefore, counsel for MPIC maintains that MPIC is entitled to

reimbursement of the benefits paid to the Appellant subsequent to her September 1, 2005 self-report statement of her functional abilities.

Decision:

Upon a careful review of all of the oral and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant's PIPP benefits were properly terminated pursuant to Section 160(a) of the MPIC Act.

Reasons for Decision:

Section 160(a) of the MPIC Act provides that the Corporation may terminate an indemnity, where a person knowingly provides false or inaccurate information to the Corporation. The Commission finds that the Appellant did knowingly provide false or inaccurate information to MPIC by virtue of the information she provided on the Reported Level of Function forms dated September 1, 2005 and December 23, 2005 and in her statement to her case manager of September 1, 2005.

On September 1, 2005, the Appellant completed and signed a Level of Function form wherein she indicated that her tolerance for walking and standing was 0 to 15 minutes, she was limited with bending, she could not squat, her tolerance for sitting was 30 to 60 minutes and 0 to 30 minutes for driving. Further, during that meeting with her case manager, the Appellant stated that when she goes to [text deleted] or other stores, her friend will carry everything and lift all bags. The Appellant also reported limitations moving her neck to the right, to the left, and up. She noted that neck movements were stiff and rigid and she must go slowly.

On December 23, 2005, the Appellant completed and signed another Level of Function Form. On this form she reported that she was only able to walk for 0 to 30 minutes and that her tolerance for standing was 0 to 15 minutes. She could only lift between 0 to 5 pounds, she was limited with bending, she could not squat, her tolerance for sitting was 10 to 60 minutes and 0 to 30 minutes for driving. The Appellant again reported limitations moving her neck to the right, to the left, up and down due to poor range of motion for all of these functions.

In contrast, the videotaped evidence was clearly inconsistent with the Appellant's reported level of function. During the video tape surveillance of June 17, 2005, the Appellant demonstrates a normal gait, she is able to push a nearly full shopping cart, the Appellant is able to perform a full squat as well as right cervical rotation. Further, the Appellant is observed demonstrating the ability to walk and shop and move and manipulate objects without apparent pain behaviour for 43 minutes. She carries grocery bags and she demonstrates full lumbosacral forward bending while unloading her groceries. The videotape surveillance of December 7, 2005 shows the Appellant walking with a normal gait and she demonstrates full cervical left-sided rotation without any discernible pain behaviours. During the videotape surveillance of December 12, 2005 the Appellant again demonstrates a normal gait and the ability to perform a full squat. She also demonstrates full right and left sided cervical rotation and the ability to manipulate objects and carry shopping bags. Undoubtedly, the video tape evidence presents significant differences between the Appellant's self-report and the activity demonstrated during the surveillance. The Commission finds that:

1. the information that the Appellant reported on the Claimant's Reported Level of Function forms was incompatible with her activities as demonstrated on the surveillance; and

2. there is a fundamental inconsistency between the Appellant's reported level of function to her case manager and to her caregivers and her observed activities on the video tape surveillance.

The videotaped activity of shopping at various retail stores and running errands on three occasions (June 17, 2005, December 7 and December 12, 2005) is not consistent with the reported level of function forms of September 1, 2005 and December 23, 2005 wherein the Appellant reported the inability to walk or stand for too long, the limited ability to lift, bend and twist or move her neck and the inability to squat. In these circumstances, the Commission finds that there was false, inaccurate and misleading information provided by the Appellant to MPIC on the Reported Level of Function forms dated September 1, 2005 and December 23, 2005 and in her statement to her case manager of September 1, 2005.

Claimants are obligated pursuant to Section 149 of the MPIC Act to be honest and forthright in their dealings with MPIC. Dishonest or misleading statements by claimants in dealing with their insurance claims strike at the heart of the insured-insurer relationship that is necessarily founded upon trust and integrity. The Commission is therefore satisfied that there was false and inaccurate information provided to MPIC which was sufficient to warrant the application of Section 160(a) of the MPIC Act in the circumstances of this case.

The Commission finds that there was insufficient evidence presented to it to support a termination of the Appellant's PIPP benefits on the basis of Section 110(1)(a) of the MPIC Act. At the appeal hearing, [MPIC's Doctor] was unable to identify the job demands of an [text deleted]. As a result, the Commission finds that there is a lack of evidence to establish that the Appellant could work as an [text deleted]. Accordingly, we find that the termination of her benefits pursuant to Section 110(1)(a) is not supportable.

The Commission finds that the Appellant received an overpayment of IRI benefits from September 1, 2005 to March 22, 2006 and that the Appellant has received a benefit to which she was not entitled. Accordingly, pursuant to the provisions of Section 189(1) of the MPIC Act, MPIC is entitled to reimbursement from the Appellant for the amount of the overpayment.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated August 25, 2006 is therefore confirmed.

Dated at Winnipeg this 17th day of August, 2010.

YVONNE TAVARES

DIANE BERESFORD

LES MARKS