

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-05-058 and AC-09-023**

**PANEL:** Ms Laura Diamond, Chairperson  
Ms Leona Barrett  
Mr. Neil Cohen

**APPEARANCES:** The Appellant, [text deleted], was represented by  
Ms Laurie Gordon, Claimant Adviser Office;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Dianne Pemkowski.

**HEARING DATE:** June 11, 2012

**ISSUE(S):** 1. Entitlement to further physiotherapy treatment benefits  
beyond April 7, 2004.  
2. Entitlement to benefits under the Personal Injury  
Protection Plan.

**RELEVANT SECTIONS:** Sections 70(1) and 136(1) of The Manitoba Public Insurance  
Corporation Act ('MPIC Act') and Section 5 of Manitoba  
Regulation 40/94.

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

**Reasons For Decision**

The parties agreed that the issues under appeal were whether further physiotherapy treatments prior to the Appellant's right shoulder surgery were medically required and whether the right shoulder injury that resulted in the surgery of December 18, 2006 was caused by the motor vehicle accident of August 13, 2003.

The Appellant was injured in a motor vehicle accident on October 13, 2003. She suffered sternal and rib fractures, as well as injury to her neck, back, ribcage, abdomen, hips and shoulder, and headaches.

The Appellant received physiotherapy treatment, as well as medical treatment.

On July 27, 2004, the Appellant's case manager wrote to her indicating that the medical information on file indicated that she had reached a plateau in her recovery and that additional physiotherapy treatment was not medically required. This decision of the case manager was upheld by an Internal Review Officer for MPIC on February 21, 2005, although the Internal Review Officer amended the case manager's decision to allow for up to four additional sessions with the Appellant's physiotherapist so that she could receive specific home based exercises and recommendation for exercise progression.

On December 18, 2006, the Appellant underwent right shoulder arthroplasty by her orthopaedic surgeon. The Appellant had a pre-existing medical history of a surgical laminectomy in 1988, as well as surgical intervention for her right shoulder (rotator cuff) in 1996, following a fall.

The Appellant's claim for Personal Injury Protection Plan ("PIPP") benefits, regarding her medical condition following her 2006 shoulder surgery, was denied by her case manager on September 5, 2008. The case manager indicated that the medical information on the Appellant's file did not support that her current medical condition was causally related to the motor vehicle accident in question.

On December 23, 2008, an Internal Review Officer for MPIC reviewed the information on the Appellant's medical file and concluded, in agreement with [MPIC's doctor], MPIC's Health Care Services Consultant, that the requirement for repeat right shoulder arthroscopic surgery in 2006 was not causally related to the motor vehicle accident.

It is from these decisions of the Internal Review Officer that the Appellant has now appealed.

**Evidence and Submission for the Appellant:**

The Appellant testified at the hearing into her appeal. She described the motor vehicle accident and the treatment which followed from ambulance paramedics, [hospital #1], [hospital #2] Emergency, [hospital #3], her family physician and a variety of specialists. She also described the physiotherapy treatments which she underwent.

The Appellant described the relief which she derived from physiotherapy treatments. She said that she worked hard at that and derived temporary relief from it. However, she often felt the soreness returning to her joints and would go back to physiotherapy in order to avoid regression. She felt that the physiotherapy treatment led to improvement, but did admit, on cross-examination, that the improvement was temporary, requiring her to return for further treatment.

The Appellant explained the surgical laminectomy she had regarding her cervical spine in 1988. A benign tumour was biopsied, and radiation to shrink the tumour followed. This surgery was successful and the Appellant stated that she got better and carried on.

After a fall in which she hurt her shoulder in 1996, the Appellant underwent rotator cuff surgery with an orthopaedic surgeon, [Appellant's orthopedic surgeon]. She described her recovery from

that surgery. She explained that she wore a sling for a couple of weeks, but was out of it in no time and back to normal business. She described the surgery as very successful.

The Appellant explained that prior to the motor vehicle accident she spent a lot of time gardening and doing yard work in her large yard. She also [text deleted], which is very intricate work and was planning to open up a [text deleted] business. She also took care of everything in her yard, including snow removal and lawn work.

However, following the motor vehicle accident in 2003, the Appellant had increasing difficulty with her right shoulder. She tried to keep up with her baking business but she needed help because of the pain and described herself as living in pain with days filled with doctors appointments. Her back was giving her some problems, but she was dealing with that through the physiotherapy. It was her shoulder that was giving her the greatest trouble. As a result, the Appellant returned to [Appellant's orthopedic surgeon] and had additional surgery to her right rotator cuff in December of 2006.

The Appellant explained that she had no shoulder pain following recovery from her first surgery. She then began suffering from shoulder pain immediately after the motor vehicle accident and it was her firm belief that her shoulder complaints leading up to the 2006 surgery were caused by the motor vehicle accident.

Counsel for the Appellant reviewed a variety of medical reports from the Appellant's caregivers, covering the period both before and after the motor vehicle accident.

A report from [Appellant's doctor #1], dated December 11, 2002, described the 1996 injury to her arm, which was diagnosed as a rotator cuff injury. He noted that [Appellant's orthopedic surgeon] carried out arthroscopic surgery, shaving the bone and doing a repair. [Appellant's doctor #1] noted that the Appellant had major improvement with this procedure, as well as with physiotherapy and did not have any complaints regarding her shoulder on her visit to him of November 28, 2002.

The Ambulance Patient Care Report following the motor vehicle accident of October 13, 2003 depicted a pain diagram showing pain in the area over the Appellant's right front side near the chest and shoulder.

The Hospital Emergency Vital Signs Record noted the Appellant was complaining of pain to her right shoulder.

The Hospital History and Physical Examination Record dated October 14, 2003 indicated that the Appellant was complaining of pain over her right shoulder.

A report from [Appellant's doctor #2], of [hospital #4], dated October 14, 2003, indicated that the Appellant's right shoulder was painful but that there was no fracture.

An Initial Health Care Report completed by the Appellant's physiotherapist dated November 14, 2003 indicated that the Appellant was suffering from "pain in upper back, neck, right shoulder, radiating into right VIE". That report also noted tenderness to the right "SITS insertions" which [MPIC's doctor] later explained to the panel involves muscles inserting into the shoulder girdle area.

A Health Care Provider Progress Report from the Appellant's physiotherapist dated January 28, 2004 indicated that the Appellant was complaining of tension in her right shoulder girdle, decreased right shoulder range of motion and that there were multiple trigger points in the right shoulder.

In a letter dated January 7, 2005, [Appellant's doctor #3], reported and included a review of his Initial Health Care Report of February 17, 2004. He described the Appellant's right shoulder arthroscopic surgery in 1996 and a course of physiotherapy, noting that she had recovered well from these injuries.

He then saw the Appellant on October 27, 2003, for injuries resulting from the motor vehicle accident, noting posterior cervical and right shoulder pains which had flared following this accident. Range of motion of the right shoulder was also decreased in all directions with tenderness on palpitation over the right shoulder girdle and over the insertion of the rotator cuff. At a subsequent assessment of February 17, 2004, the right shoulder continued to be painful on movement with puffiness of the right hand and tenderness on palpitation over all aspects of the right shoulder. He concluded:

“In summary, although [the Appellant] did have problems in the cervical and lumbar spine prior to the motor vehicle accident of October 13<sup>th</sup> 2003, these were not problematic for some time prior to this accident...”

The physiotherapist's report of May 26, 2004 continued to show the Appellant suffering from increased tension in her upper back, neck and right shoulder, as well as decreased cervical range of motion and decreased range of motion in her shoulder.

A report from the physiotherapist dated June 20, 2006 indicated that the Appellant still suffered from pain in her upper back, neck and shoulders, that she was a surgical candidate for her right shoulder and that her physician had requested physiotherapy treatment to continue as a result.

[Appellant's physiatrist] [text deleted], reported on April 18, 2008. She indicated that the Appellant was involved in a motor vehicle accident on October 13, 2003 and sustained soft tissue injury, including rotator cuff, sternal and rib fractures. She described the right acromioplasty under general anesthesia which the Appellant underwent, the right shoulder pain which occurred after the motor vehicle accident, and the Appellant's condition following the motor vehicle accident.

The Appellant's orthopaedic surgeon, [text deleted], reported on April 28, 2008. He indicated that he first saw her on December 1, 1999 with regards to her right shoulder and that, following shoulder arthroscopy on May 23, 2000, she recovered well and that after her last visit on October 25, 2000, she was feeling better and moving better.

He indicated he reviewed her again on September 15, 2005, about two years after a motor vehicle accident.

“...She was involved in a MVA about two years prior to her 2005 visit and developed shoulder pain again, which had become very dysfunctional for her.

We did an MRI to rule out a cuff tear and there was signal change in the cuff, but no evidence of a full thickness tear. Her cuff pain persisted and in 2006 she elected to proceed with acromioplasty for further assessment.

This was performed on December 18, 2006 and she has gradually been working on regaining motion and function since then. Post-operatively she had a lot of difficulties with other extremity symptoms and she has been investigated by [Appellant's doctor #4]...”

A neurosurgeon, [text deleted], reported on May 8, 2008 indicating that the Appellant previously had injured her right shoulder, requiring surgery, and that she had a second injury to her right shoulder in a motor vehicle accident, again requiring surgical intervention. He described the Appellant's condition following the surgery.

The Appellant's family physician, [Appellant's doctor #3] reported again on November 17, 2008. He stated:

“It is important to point out that [the Appellant] did not complain of shoulder pains or limitation of range of movement of the right shoulder immediately prior to the motor vehicle accident of October 13<sup>th</sup>, 2005. Following the motor vehicle accident [the Appellant] complained of right shoulder pain in addition to lumbar back pain and right hip pain. I am appending a copy of my letter of January 7<sup>th</sup>, 2005 which details her pains dating from the time of the motor vehicle accident...”

The Appellant was assessed by [Appellant's doctor #5] who reported on March 16, 2009. He described her cervical surgery and then noted:

“She managed in the intervening years without much trouble. However, she fell and aggravated her right shoulder in about 1996, for which she underwent a surgical intervention with some adequate improvement in shoulder symptoms after that.

On October 13, 2003 she was involved in a motor vehicle accident on the highway. She and her husband were travelling down the road, when another vehicle, approaching at right angles, failed to stop. That vehicle passed in front of her vehicle, but was struck on the rear by her vehicle. The airbags were deployed. She had immediate right shoulder pains and chest pains. Apparently a sterna fracture was diagnosed, and ultimately surgery was planned again on the right shoulder.”

[Appellant's neurosurgeon #2], reported on August 15, 2011 and December 12, 2011. He indicated that his understanding of the patient's history was that there was a direct relationship between the onset of her shoulder discomfort and pain and the motor vehicle accident, indicating that he would draw the conclusion that on the balance of probabilities it was more likely that the



motor vehicle accident was a precipitant cause of her shoulder problem, as there was a fairly strong temporal relationship between the two.

Counsel for the Appellant reviewed all of these reports, along with the Appellant's testimony and the reports provided by [MPIC's doctor], MPIC's Health Care Consultant. Although [MPIC's doctor] seemed to take the position that the Appellant and some of her caregivers were confusing general pain in the shoulder girdle region with her shoulder and rotator cuff itself, counsel for the Appellant submitted that simply looking at the sequence of events which indicated that the Appellant had no shoulder problem in the years prior to the motor vehicle accident and rotator cuff problems identified as early as two weeks following the motor vehicle accident, with various shoulder complaints to caregivers immediately after the accident, the causal relationship between the 2006 shoulder surgery and motor vehicle accident was clear. Although the surgery itself did not occur until almost three years after the motor vehicle accident, the Appellant provided consistent reports of pain and difficulties with range of motion in that shoulder, continuing through signs of positive impingement less than one year after the motor vehicle accident. This resulted in her eventual referral to [Appellant's doctor #6], unsuccessful cortisone shots, and finally in the 2006 surgery.

Although the Appellant had earlier problems with her rotator cuff, the evidence showed that following successful surgery in 2000, the Appellant was continuing with maintaining her home and trying to get her [text deleted] business going right up until the motor vehicle accident. This was followed by immediate complaints of right shoulder pain following the accident, tenderness and rotator problems two weeks after the accident, impingement noted less than a year after the motor vehicle accident and finally surgery.

Counsel submitted that the right shoulder surgery was clearly a result of the motor vehicle accident. She further submitted that the Appellant should be reimbursed for these outstanding physiotherapy treatments in 2005 and the physiotherapy treatments which she had undergone in 2006, at the request of her doctor and as a result of the motor vehicle accident shoulder injury.

**Evidence and Submission for MPIC:**

[MPIC's doctor] testified at the appeal hearing. She was accepted by both parties as an expert medical consultant with expertise in the area of musculoskeletal medicine including insurance medicine, sports injury medicine and research.

[MPIC's doctor] reviewed two previous handwritten opinions which she had provided regarding the medical necessity of further physiotherapy for the Appellant. She indicated that the goal of physiotherapy is to cure the patient of pathology arising out of a diagnosis, but that goal is not achieved for everyone. In her view, after reviewing the Appellant's file, she concluded that the Appellant had plateaued with physiotherapy and would not see a benefit from indefinite ongoing therapy. Rather, the Appellant's condition had become a chronic situation and it was time to focus on treatment measures which involved self-management on a daily basis so that the Appellant could help with her own sessions.

[MPIC's doctor] also noted that the physiotherapist's most recent report, dated July 11, 2011, failed to set out important information regarding why she believed the Appellant's shoulder injury was caused by the motor vehicle accident, and why the physiotherapist believed that there was a medical requirement for further physiotherapy treatment.

[MPIC's doctor] also reviewed and provided more detail regarding opinions she had provided, dated July 21, 2008, December 8, 2008, and October 12, 2011 regarding the lack of a causal connection between the motor vehicle accident and the requirement for the Appellant's 2006 shoulder surgery. [MPIC's doctor] explained that the Appellant and some of the reports on file had confused references to pain in the Appellant's shoulder girdle with actual symptoms in her rotator cuff. [MPIC's doctor] explained that the Appellant had suffered a fracture in her sternum, and that when talking about injury to the shoulder, many of the physicians were really talking about the collarbone, chest bone, and sternum area (i.e. the shoulder girdle) and not referring to the Appellant's rotator cuff. She indicated that the mechanism of injury in this case (where one vehicle broadsided another) could cause traumatic fracture of the sternum and ribs. These were both part of the shoulder girdle and there is no dispute that the shoulder girdle itself was injured.

When the Appellant presented to [Appellant's doctor #3] a year later he then recognized a recurrence of her rotator cuff injury. [MPIC's doctor] explained that the rotator cuff is a very specific part of the shoulder region and is very different from the chest and shoulder girdle region. Knowing the Appellant's pre-motor vehicle accident history and history of rotator cuff surgery, [Appellant's doctor #3] recognized the rotator cuff injury at that point and referred her to her past orthopaedic surgeon, [text deleted].

[MPIC's doctor] expressed surprise that [Appellant's neurosurgeon #2] would want to comment upon the causal connection between the motor vehicle accident and the rotator cuff surgery, as he had not been involved in her care until after the second surgery.

[MPIC's doctor] also noted that the Appellant's first rotator cuff surgery could be characterized as palliative and not curative. Accordingly, it was expected that the natural history of a rotator cuff condition such as hers would be to progress with time. That doesn't mean that there would automatically be a requirement for a second surgery, but, in [MPIC's doctor's] view, the second rotator cuff surgery was connected to the same condition which necessitated the first rotator cuff surgery, and not to the motor vehicle accident.

Counsel for MPIC noted that the physiotherapy treatment prescribed for the Appellant in 2004 would be paid for by MPIC and that four treatments would be paid for in 2005. This meant that there were three remaining treatments in 2005 and any possible treatments prior to June 20, 2006, when we first see a prescription for physiotherapy referred to by the physiotherapist, still in issue between the parties.

In regard to physiotherapy treatments after June 20, 2006, when the physiotherapist had indicated that a doctor had prescribed physiotherapy, counsel noted that entitlement would depend upon the panel's finding as to whether or not the surgery (which necessitated this physiotherapy treatment) was a result of the motor vehicle accident. Only then would Section 5 of Regulation 40/94 apply to support entitlement to physiotherapy treatment after June 2006.

In regard to physiotherapy treatments in 2004 and 2005, and prior to June 20, 2006, counsel submitted that the Appellant had indicated in her testimony that physiotherapy was providing her with only temporary improvement and that overall, her condition had not continued to improve with further physiotherapy. She was not getting better. This confirmed, she submitted, [MPIC's doctor's] opinion that the Appellant had plateaued. Counsel submitted that the Appellant had as

such, reached maximum medical improvement with physiotherapy during that period and that further such treatment was not medically required.

In regard to the causal connection between the right rotator cuff surgery and the motor vehicle accident, counsel for MPIC reviewed the documentation on the Appellant's file from the hospital, including physicians and nursing notes following the motor vehicle accident. All of these indicated that while the Appellant complained of pain in her right shoulder, she had not sustained a fracture. Although the Appellant described this as trauma to her shoulder, cross-examination revealed that the Appellant, in her mind, equated pain with trauma and that there had been no diagnosis of "trauma" to the right shoulder. Rather, there had simply been complaints of pain.

As [MPIC's doctor] had noted, there were pain complaints in the right shoulder girdle at the time, but it was not until almost a year later that a rotator cuff injury was diagnosed. All of the diagnosis in the days and months following the motor vehicle accident, involved cervical pain, lumbar and sternum fractures. There was no diagnosis of a rotator cuff injury at that time. Counsel submitted that as [Appellant's doctor #3] was well aware of the Appellant's condition and past history with a rotator cuff, so that if he had seen a rotator cuff injury immediately following the motor vehicle accident, he would have been able to identify it.

Counsel also submitted that although many of the Appellant's caregivers did connect the shoulder surgery with the motor vehicle accident, this was based in large part upon the Appellant's reports to her caregivers of her history and her indication to them that her right shoulder condition presented after the accident and was a result of it. Many of these caregivers

did not even see her until after the 2006 shoulder surgery, and thus were not in a position to comment upon the connection between the surgery and the motor vehicle accident.

Counsel submitted that the need for this elective right shoulder surgery was a natural evolution of a long-standing right shoulder condition. It was not caused by the motor vehicle accident and any therapy or other PIPP entitlements arising out of the shoulder condition and surgery should not be funded by MPIC, as they were not a result of the motor vehicle accident.

### **Discussion:**

The MPIC Act provides:

#### **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

#### **Reimbursement of victim for various expenses**

[136\(1\)](#) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Manitoba Regulation 40/94 provides:

#### **Medical or paramedical care**

**5** Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician;
- (b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under *The Health Services Insurance Act* if the care were dispensed in Manitoba.

The onus is on the Appellant to show, on a balance of probabilities, that further physiotherapy treatment between April 2004 and June 2006 was medically required. The onus is also on the Appellant to show, on a balance of probabilities, that the requirement for the rotator cuff surgery of December 18, 2006 was caused by the motor vehicle accident.

The panel has reviewed the documentation on the Appellant's indexed file as well as the testimony of the Appellant and [MPIC's doctor] at the hearing and the submissions of counsel for the Appellant and for MPIC.

The panel has concluded that the evidence does not establish that the physiotherapy treatments for which the Appellant seeks reimbursement between April 2004 and June 2006 were medically required. The evidence established that the Appellant's condition had plateaued and that she was receiving only temporary relief, and not lasting improvement, from physiotherapy treatments at that time.

Accordingly, the Appellant's appeal in regard to physiotherapy treatments between April 2004 and June 2006 is dismissed and the Internal Review Decision of February 21, 2005 is confirmed on that basis.

The panel has also carefully reviewed the evidence regarding the Appellant's right rotator cuff shoulder injury that resulted in the surgery of December 2006. In our view, the evidence clearly establishes that the Appellant's right shoulder and rotator cuff were asymptomatic prior to the motor vehicle accident. This was clearly documented by [Appellant's doctor #1] in December of 2002 and confirmed by reports from her family physician, [Appellant's doctor #3], and her orthopaedic surgeon, [text deleted].

Following the motor vehicle accident, there is clear evidence of an immediate reporting of right shoulder pain and symptoms by the Appellant. However, [MPIC's doctor] advanced the theory that these reports, by both the Appellant and her caregivers, related to the injury she felt "in her shoulder girdle" region, resulting from her sterna, rib and other injuries, and not from any injury to the rotator cuff. [MPIC's doctor] noted in this regard:

"A review of the documentation that covers the time of the acute and subacute period post-motor vehicle collision does not support that the claimant suffered collision related pathology to her right shoulder (glenohumeral joint). There is no documented support that the 2006 right shoulder arthroscopic procedure was required to address collision related injuries. The claimant had complaints diffusely involving the neck and shoulder girdle region which should not be confused with the right shoulder joint itself. It appears that [A's orthopedic surgeon] determined from his assessment of the claimant approximately three years after the motor vehicle collision, that she had right shoulder joint symptomatic pathology, which could be addressed by a right shoulder surgical procedure."

The panel does not find that the evidence in the Appellant's appeal supports [MPIC's doctor's] theory. Rather, we accept the testimony of the Appellant and the reports of her caregivers after the motor vehicle accident and throughout the months that followed regarding the Appellant's complaints of shoulder pain and its relationship to her rotator cuff injury.

In addition to the testimony of the Appellant, this includes reports from:



- [Hospital #4], Hospital Vital Signs Record, undated – complaints of pain right shoulder
- [Hospital #4], history Physical Examination, October 13, 2003 – still pain over right shoulder
- [Appellant's doctor #2] report, October 14, 2003 – right shoulder painful but not fractured
- Physiotherapist [text deleted], Initial Care Report, November 14, 2003 – pain in upper back, neck, right shoulder, radiating into right VIE
- Physiotherapy Report, [text deleted], January 28, 2004 – patient complains of tension in right shoulder girdle...decreased right shoulder range of motion...multiple trigger points in upper back, neck, right shoulder...tender SITS insertions...
- [Appellant's doctor #3] reports, summarized in report of January 7, 2005 – posterior cervical and right shoulder pains flared following the accident...range of motion of the right shoulder was also decreased in all directions with tenderness on palpitation over the right shoulder girdle and over the insertion of the rotator cuff...November 17, 2003...the right shoulder continues to be painful on movement with puffiness of the right hand being present. Tenderness persisted on palpitation over all aspects of the right shoulder.

The panel finds that the Appellant has provided strong evidence to show that following previous successful rotator cuff surgery, she had no shoulder problems immediately prior to the motor vehicle accident. We find that the Appellant has also provided multiple, consistent, documented reports of shoulder pain after the motor vehicle accident which resulted in a diagnosis, within the year following, of a rotator cuff injury. We find that the Appellant has met the onus upon her of showing, on a balance of probabilities, that the requirement for the December 2006 rotator cuff surgery was a result of the motor vehicle accident.

Accordingly, the Appellant's appeal is allowed and the decision of the Internal Review Officer, dated December 23, 2008 and denying the Appellant entitlement to PIPP benefits is overturned. As counsel for MPIC indicated, since physiotherapy treatments after June 20, 2006 were prescribed by a physician, the Appellant will also be entitled to reimbursement for physiotherapy treatments after that date, which were prescribed in order to treat the right shoulder injury which arose out of the motor vehicle accident.

The Appellant's appeal from the decision of the Internal Review Officer dated February 21, 2005 is dismissed and her appeal from the Internal Review Decision of December 23, 2008 is upheld.

Dated at Winnipeg this 28<sup>th</sup> day of June, 2012.

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**LAURA DIAMOND**

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**LEONA BARRETT**

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**NEIL COHEN**