

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-142**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms Leona Barrett
Ms Loretta Ross

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

HEARING DATE: March 19, 2012

ISSUE(S): 1. Whether the Appellant had a reasonable excuse for the late filing of her Application for Review.
2. Whether the Appellant is entitled to Income Replacement Indemnity ("IRI") benefits following a 180 day determination.

RELEVANT SECTIONS: Section 86(1), 172(1), and 172(2) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

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

Reasons For Decision

[The Appellant) was involved in a motor vehicle accident on February 21, 2006. The Appellant was stopped in order to make a left turn when she was struck in the rear bumper by another vehicle which had been pushed into her by a third vehicle. The damage to the Appellant's rear bumper was \$378.97.

The Appellant attended the [Hospital] two days after the motor vehicle accident and complained of pain in the back of her neck shooting down to her legs, stiffness to her neck and shoulders, headaches, blurred vision and sinus problems. According to the [hospital] Report, the Appellant indicated that she had not felt anything but a jolt at the time and that she was not “KO’d” (knocked out). The report also indicated that the Appellant was alert and oriented and “had full recall of events”. The neurological examination was unremarkable and the Appellant was given a diagnosis of myofascial neck pain.

The Appellant saw her medical physician, [Appellant’s doctor #1], on March 2, 2006. [Appellant’s doctor #1] provided an Initial Health Care Report to MPIC in which he stated his clinical diagnosis of “C & LS spine strain, headaches”. [Appellant’s doctor #1] further stated the Appellant was suffering from a whiplash WAD2 and prescribed physiotherapy treatments.

In a note to file dated April 30, 2006, the case manager reported that the Appellant advised her that she was going to physiotherapy and stated that she had seen [Appellant’s doctor #2] who had first prescribed her anti-depressants and had now doubled her dosage. She also said she was having problems at the base of her spine and she was going to see a bone specialist for her wrists if they didn’t get better.

Case Manager’s Decision – Non-Earner - IRI:

On April 20, 2006 the case manager wrote to the Appellant advising her that MPIC had completed its investigation and concluded that as a non-earner the Appellant was not entitled to Income Replacement Indemnity (“IRI”) benefits for the first 180 days after the accident.

The Appellant filed an Application for Review of this decision on May 10, 2006.

[Appellant's doctor #1] provided a report on June 1, 2006 to MPIC's case manager and indicated that he had assessed the Appellant on that date and she continued to complain of dizziness, blurred vision, pain to her neck and shoulders and had developed some fluid behind her tympanic membrane. [Appellant's doctor #1] further stated that the Appellant had been seen by [Appellant's ENT specialist], an ear, nose and throat specialist, who would be reassessing the Appellant after [Appellant's doctor #1] had consulted with him. He further stated that the Appellant was unable to work as a hairstylist at the present time.

Internal Review Decision – Non-Earner - IRI:

The Internal Review Officer conducted a hearing on June 8, 2006 in respect of the Appellant's Application for Review. The Internal Review Officer issued a decision on June 26, 2006 dismissing the Appellant's Application for Review and confirmed the Appellant was properly classified as a non-earner for the purpose of receiving IRI benefits.

In a note to file on July 20, 2006 the case manager reported of a telephone discussion with the Appellant who advised that she was seeing both [Appellant's doctor #1] and [Appellant's doctor #2] (but mostly [Appellant's doctor #1]). She further advised that [Appellant's doctor #2] had prescribed the anti-depressants she was taking.

The case manager met with the Appellant on July 24, 2006. The Appellant complained about dizziness and bad headaches and that she was also suffering from blurred vision. She also

informed the case manager that she had seen an eye doctor who had advised her that the problem was not her eyes, but rather pressure from her head which caused the blurred vision.

MPIC arranged for [independent physiatrist], a physiatrist, to conduct an independent assessment of the Appellant. [Independent physiatrist] was provided with all of the relevant medical reports and was requested:

1. To comment, that if his findings did not support a return to work, to provide the duties that the Appellant would be unable to perform and any recommendations that may assist in her return to work.
2. Advise whether the Appellant has sustained any permanent impairment.

[Independent physiatrist] examined the Appellant on August 21, 2006. In his report of August 31, 2006, [independent physiatrist] indicated that the Appellant's car had suffered minimal damage and the Appellant's initial symptoms following the motor vehicle accident did not indicate any significant injury. The Appellant's initial complaints about sinus problems and her complaints respecting wrist pain could not be attributed to the motor vehicle accident.

[Independent physiatrist] concluded that:

1. There did not appear to be any physical diagnosis related to the motor vehicle accident.
2. In respect of the Appellant's ability to perform her duties, he was of the view that it did not appear there was any objective physical diagnosis related to the motor vehicle accident to prevent the Appellant from performing her duties as a hairdresser.
3. It was unlikely the Appellant had sustained any permanent impairment related to the motor vehicle accident. (Underlining added)

[Appellant's neurologist], a neurologist, was requested by [Appellant's doctor #1] to assess the Appellant's complaints arising from the motor vehicle accident. In his report of August 24, 2006 to [Appellant's doctor #1], [Appellant's neurologist] stated that:

1. Following the motor vehicle accident, the Appellant complained about the blockage to her nose which made it difficult to breathe.
2. The Appellant had seen [Appellant's ENT specialist], an ENT specialist, who told her that her symptoms were not due to any eye, ear, nose or throat problem either and suggested a neurological consultation.
3. As a result, [Appellant's doctor #1] had referred the Appellant to [Appellant's neurologist].
4. The Appellant complained to [Appellant's neurologist] about pain in the occipital region, she has constant headaches, pain in her skull, sides and back.
5. The Appellant stated that she could not work because the symptoms are aggravated by standing and bending.
6. She also stated that she developed shortness of breath while sitting in his office.
7. She advised him that she smokes less than a half a packet of cigarettes per day.

[Appellant's neurologist] concluded his report by stating he could not find any neurological defect in respect of the Appellant and stated:

“...From the historical data, it would seem that shortly after the accident, [the Appellant] developed intense dysautonomic symptoms, with nasal congestion, subsequently profuse nasal discharge. The conglomeration of symptoms, nasal congestion, profuse nasal discharge, headaches, is highly suggestive of a cluster migraine variant (Horton's syndrome). This type of headache tends to occur in smokers...

As she stated, she has a profound dysautonomic disorder. This may be cluster migraine and may be related to her cigarette smoking.

I have not been able to relate these symptoms to injury from the accident. In spite of the temporal relationship.” (Underlining added)

Case Manager’s Decision – 180 Day Determination:

On September 5, 2006, the case manager wrote to the Appellant stating that:

1. After the 181st day after the motor vehicle accident, the Appellant’s employment was determined to be that of a hairdresser.
2. Based on the available medical information on the Appellant’s file, the case manager stated that the Appellant was capable of performing her determined occupation as of August 3, 2006.
3. The Appellant was therefore not entitled to a 180 day determination nor was there any entitlement to IRI benefits.

On September 11, 2006 the Appellant filed a Notice of Appeal of the Internal Review Decision dated June 8, 2006 in respect of her non-earner status - IRI.

[Appellant’s doctor #1] had referred the Appellant to [Appellant’s psychiatrist], a psychiatrist, for an assessment. On September 11, 2007 [Appellant’s psychiatrist] wrote to [Appellant’s doctor #1] and stated:

“Thank you for asking me to see this [text deleted] whom I met with on two occasions. She presented late for the first appointment, did not maintain her second appointment and was on time for the third appointment.

I do not have much to advise you regarding this patient. I was not able to effect a meaningful assessment alliance with her and advised her I could not help her.” (Underlining added)

On December 20, 2007, the Appellant submitted an Application for Review regarding the 180 day determination for IRI from the case manager’s decision of September 5, 2006.

On January 15, 2008 the case manager wrote to [independent psychologist], who is a psychologist in private practice, and requested that he review the Appellant's medical documentation that was contained on MPIC's medical file and provide an opinion on two matters:

1. "Based on the medical, is there evidence of a cognitive or psychological injury relating to the motor vehicle accident?
2. Is there evidence, that the claimant sustained a psychological or cognitive injury relating to the motor vehicle accident which would,
 - Preclude travel to and from the workplace?
 - Result in an inability to perform required tasks as a hairdresser?
 - Pose a safety/health risk to herself, customers or co-workers?
 - That returning to the workplace would adversely effect (sic) the natural history of the clinical condition"?

In a report to MPIC dated January 24, 2008 [independent psychologist] reviewed the medical reports from the [hospital] and the reports of [independent physiatrist] and [Appellant's neurologist] and stated:

1. In the report from the Misericordia Health Centre Outpatient/Urgent Care Department [independent psychologist] noted that the Appellant had not sustained a loss consciousness at the time of the motor vehicle.
2. The report indicated that the Appellant was alert and oriented at the time and recalled all the details of the motor vehicle accident.
3. It was his opinion that it was highly unlikely that the Appellant sustained a brain injury or even a mild concussion having regard to the amount of damage to the motor vehicle.
4. "...There is no evidence to indicate the claimant would have sustained any injuries that would have resulted in cognitive impairment. This is confirmed by: absence of any

immediate complaints following the motor vehicle accident; absence of complaints of cognitive difficulties two days later in the [hospital]; evidence that the claimant did not sustain a loss of consciousness; and indications that the claimant was alert and oriented and recalled all the details of the motor vehicle accident in question...”

(Underlining added)

In respect of the Appellant’s psychological condition [independent psychologist] stated:

1. He was unable to find any information that suggested the Appellant sustained any injuries or trauma which would likely result in the severe level of depression that she was currently reporting.
2. The information pertaining to the motor vehicle accident indicates that it is improbable that the Appellant would have developed psychological conditions as a direct result of the accident in question.
3. There were no psychological barriers which could be related to the motor vehicle accident which would affect the Appellant’s ability to return to her workplace.

[Independent psychologist] concluded his report by stating:

“...Finally, no psychological or cognitive conditions have been identified that, on a balance of probabilities, are related to the motor vehicle accident in question, for which pharmacological or psychological treatment is indicated.” (Underlining added)

[Independent psychologist] reviewed the Appellant’s drug purchases from the Manitoba Health records which indicated that at least two years prior to the motor vehicle accident, the Appellant had been filling prescriptions for an anti-anxiety agent (Diazepam - valium), an anti-depressant (Amitriptyline) and a medication to assist her with sleeping (Zopiclone).

Case Manager's Decision - February 14, 2008 – Psychological Treatment Expenses:

On February 14, 2008 the case manager wrote to the Appellant rejecting her request for reimbursement for psychological treatment arising out of the motor vehicle accident. The case manager informed the Appellant that based on the medical review, there was no evidence to establish on a balance of probabilities that the Appellant had developed any cognitive or psychological injuries as a result of the motor vehicle accident. As a result, MPIC would not reimburse the Appellant for any expenses incurred relating to any psychological treatment.

Internal Review Officer's Decision – February 25, 2008 – 180 Day Determination:

The Internal Review Officer wrote to the Appellant and rejected the Appellant's Application for Review of the case manager's decision of September 5, 2006. In this decision, the Internal Review Officer stated that:

1. The Appellant was capable of performing her determined occupation (hairdresser) as of August 3, 2006.
2. The Appellant had failed to comply with the requirement under section 172(1) of the MPIC Act to file an Application for Review within the 60 day period from the date the case manager's decision was issued on September 5, 2006.
3. The Appellant's Application for Review was received by MPIC on December 21, 2007, a period of 13 months after the expiry date of the 60 day period under Section 172(1) of the MPIC Act.

The Internal Review Officer's decision set out the reasons why the Appellant had indicated she failed to comply with the filing deadline:

- Extreme pain following the accident which got progressively worse.
- "Deep depression" in the spring following the accident.

- Memory loss caused by the depression.
- Depression being the “main reason” the Appellant did not file for a review on time.

The Internal Review Officer concluded that the Appellant had not provided a reasonable excuse for late filing and therefore rejected the application for an extension of time pursuant to Section 172(2) of the MPIC Act.

As well, the Internal Review Officer rejected the Appellant’s Application for Review in respect of the case manager’s decision that the Appellant was a non-earner and able to return to work as a hairdresser after the 181st day following the motor vehicle accident and therefore in accordance with the provisions of Section 86(1) and (2) of the MPIC Act the Appellant was not entitled to IRI benefits.

In arriving at this decision the Internal Review Officer relied on the report of [independent physiatrist] dated August 31, 2006 who, based on an objective physical diagnosis, concluded that the Appellant was capable of performing her duties as a hairdresser.

In respect of the Appellant’s allegations of deep depression, the Internal Review Officer stated:

“...it is noted that your pharmaceutical purchases from Manitoba Health indicate you were filling prescriptions for an anti-anxiety agent (Diazepam), an anti-depressant (Amitriptyline), and a medication to assist with your sleep (Zopiclone) prior to the motor vehicle accident...”

As a result, based on all the medical evidence presented the Internal Review Officer confirmed the decision of the case manager and dismissed the Application for Review.

The Appellant filed a Notice of Appeal on May 22, 2008.

[text deleted], Director of the Claimant Adviser Office, who was representing the Appellant at that time, wrote to the Commission indicating that the Appellant had advised him to withdraw the issue of:

“Was the Appellant properly classified as a “non-earner” for the purpose of calculation entitlement to Income Replacement Indemnity benefits?”

[Director of the Claimant Adviser Office] further stated:

“The Appellant, with the assistance of the Claimant Adviser Office will continue to investigate and pursue the remaining issues:

- Whether the Appellant had a reasonable excuse for the late filing of her Application for Review;
- And if so, whether she is entitled to Income Replacement Indemnity benefits and a 180 day determination.”

On June 25, 2010 the Appellant’s physician, [Appellant’s doctor #1], wrote to [Director of the Claimant Adviser Office] in response to his question and stated that:

1. The Appellant suffered from an ongoing mood disorder on and off prior to the motor vehicle accident.
2. This mood disorder was aggravated by the motor vehicle accident.
3. The Appellant’s condition was not solely related to the motor vehicle accident.
4. There was no objective physical diagnosis to contraindicate that the Appellant was unable to perform her duties as a hairdresser.
5. The Appellant had been taking the medications of Diazepam, Amitriptyline and Zopiclone for a period that predated the motor vehicle accident for her mood disorder, anxiety and insomnia.
6. The motor vehicle accident made the Appellant’s conditions of depression, anxiety and insomnia worse due to her inability to work. (Underlining Added)

In his letter [Director of the Claimant Advisor Office] asked the following question of [Appellant's doctor #1]:

“Was the severity of the impairment such that it would have prevented [the Appellant] from functioning administratively and leaving her incapable of following the instructions contained with the September 5, 2006 case manager letter concerning the Application for Review process until December, 2007?”

In response, [Appellant's doctor #1] stated:

“She was impaired significantly in respect to her functional capacity and from time to time, she was depressed to the point that she would have been impaired to follow the instructions contained in the September 5, 2006 case manager letter concerning the Application for Review Process until December, 2007.” (Underlining added)

Appeal:

The relevant provisions of the MPIC Act are:

Entitlement to I.R.I. after first 180 days

[86\(1\)](#) For the purpose of compensation from the 181st day after the accident, the corporation shall determine an employment for the non-earner in accordance with section 106, and the non-earner is entitled to an income replacement indemnity if he or she is not able because of the accident to hold the employment, and the income replacement indemnity shall be not less than any income replacement indemnity the non-earner was receiving during the first 180 days after the accident.

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.

Appeal Hearing:

The appeal hearing took place on March 19, 2012. The Appellant attended at the hearing on her own behalf by teleconference. Mr. Matthew Maslanka appeared on behalf of MPIC.

Extension of Time:

The first issue that the Commission was required to determine was whether or not the Appellant had provided a reasonable excuse to delay filing of her Application for Review, being a period of 13 months out of time.

MPIC's legal counsel opposed the Appellant's application for an extension time.

The Appellant testified at the hearing that:

1. As a result of her husband's death prior to the motor vehicle accident she suffered from memory loss and that subsequent to the motor vehicle accident she suffered from headaches, backaches, anxiety, insomnia, depression and memory loss.
2. For several years prior to the accident she had been prescribed medications of Diazepam, Amitriptyline and Zopiclone.
3. Prior to and after the motor vehicle accident she was taking Amitriptyline and Zopiclone to assist her in her sleeping.
4. She denied ever using Diazepam although continued for several years before and after the motor vehicle accident to obtain prescriptions for Diazepam.
5. She suffers from consistent pain, anxiety, depression and insomnia resulting from the motor vehicle accident.

The Commission notes that the Internal Review Officer, in her decision of February 25, 2008, provided corroboration of the Appellant's use of drugs in order to combat her depression and stated:

“With respect to your allegations that the motor vehicle accident caused your “deep depression”, it is noted that your pharmaceutical purchases from Manitoba Health indicate you were filling prescriptions for an anti-anxiety agent (Diazepam), an anti-depressant (Amitriptyline), and a medication to assist with your sleep (Zopiclone) prior to the motor vehicle accident, with documentation of prescriptions for all of these medications having been filled for at least two years prior to the motor vehicle accident, including just one month prior to the motor vehicle accident (January 18 and 19, 2006).

The Commission notes the Appellant provided reports to her case manager in respect to her medical problems. In a report to file dated November 15, 2007, the Appellant was reported to have told her case manager that she was experiencing:

- “Difficulty with concentration
- ...
- ...
- ...
- ...
- ...
- ...
- Feeling depressed”

The factors that the Commission takes into account in deciding whether or not to exercise its jurisdiction in respect to the extension of time under Section 172(2) of the MPIC Act are:

1. The length of the delay.
2. The conduct of the Appellant.
3. The reasons for the delay.
4. Whether there has been any prejudice resulting from the delay.
5. Whether there was any waiver by the Appellant.
6. Any other factors which argue to the justice of the proceedings.

The Commission notes that a delay of 13 months is an extremely significant delay for making an Application for Review. The Commission finds that although the delay was lengthy, there has been no prejudice to MPIC resulting from the delay and the Appellant has not waived her right to have the Commission review the Internal Review Officer's decision.

The Appellant advised the Internal Review Office the reason she failed to comply with the filing of the deadline is primarily due to memory loss caused by depression.

The Commission has heard the testimony of the Appellant and is satisfied that the Appellant suffered from a mood disorder, depression, and loss of memory for several years, both before and after the motor vehicle accident. The Appellant testified at the hearing that she had difficulty with concentration, difficulty sleeping and suffered from anxiety, depression and a loss of memory. These comments are consistent with the Appellant's report to the case manager, as set out in the note to file of November 15, 2007.

The Appellant's testimony and her comments to the case manager are corroborated by [Appellant's doctor #1's] finding that the Appellant due to her condition did not have the capacity to follow the instructions contained in the case manager's September 5, 2006 letter.

The Commission accepts the Appellant's testimony that due to a combination of depression, which could affect the Appellant's motivation, and her loss of memory she failed to make a timely application for review of the Internal Review Officer's decision.

For these reasons, the Commission finds that the Appellant has established, on a balance of probabilities, that she has provided a reasonable excuse for failing to make her Application for Review of the case manager's decision within the 60 day period as set out in Section 172(1) of the MPIC Act. The Commission therefore grants the Appellant an extension of time and agrees that the Commission has jurisdiction to hear the merits of her appeal.

Entitlement to IRI after the 181st day following the motor vehicle accident:

After a careful review of all of the relevant medical reports, the testimony of the Appellant, and the submissions of MPIC's legal counsel, the Commission finds that the Appellant has failed to establish on a balance of probabilities that she was incapable of performing her determined occupation as a hairdresser as of August 3, 2006, the 181st day following the motor vehicle accident. The Commission therefore concludes that the Appellant is not entitled to IRI benefits.

The Appellant was involved in a relatively minor motor vehicle accident which caused \$378.97 damage to her rear bumper.

The Appellant attended the [hospital] two days after the motor vehicle accident and presented with complaints of back pain. The Appellant was diagnosed with myofascial neck pain, Tylenol #2 was prescribed and she was advised to see her attending physician.

The Appellant saw her personal physician, [Appellant's doctor #1], on March 2, 2006, (approximately 9 days after the motor vehicle accident) who reported to MPIC that the Appellant was suffering WAD2 whiplash. [Appellant's doctor #1] prescribed physiotherapy and Tylenol #2 and indicated that the Appellant could return to work on April 30, 2006.

The Commission notes that [Appellant's doctor #1] in his response to [Director of the Claimant Advisor Office] approximately 4 years after the motor vehicle accident stated that:

“There did not appear to be any objective physical diagnosis on the file or any related to the motor vehicle accident to contraindicate the claimant performing her job duties as a hairdresser.”

The Appellant subsequently complained to [Appellant's doctor #1] about dizziness and he referred her to [Appellant's ENT specialist]. [Appellant's ENT specialist] told the Appellant that her symptoms were not related to ear, nose and throat and suggested a neurological consultation.

[Appellant's doctor #1] referred the Appellant to [Appellant's neurologist] (a neurologist), who could find no neurological defect and diagnosed the Appellant as suffering from Horton's Syndrome. [Appellant's neurologist] concluded that he was unable to relate the Appellant's symptoms to any injuries the Appellant suffered in the motor vehicle accident.

[Independent physiatrist], (a physiatrist in private practice) examined the Appellant and provided an extensive report to MPIC on August 31, 2006 and found the Appellant's physical complaint not related to the motor vehicle accident. He stated in his report that that there was no objective physical basis to conclude that the injuries suffered by the Appellant in the motor vehicle accident prevented her from returning to work as a hairdresser.

MPIC asked [independent psychologist], a psychologist, to review the relevant medical reports on file and to advise whether or not there was any cognitive or psychological injury relating to the motor vehicle accident which would prevent the Appellant from returning to work as a hairdresser.

[Independent psychologist] reviewed all of the relevant medical reports contained in MPI's medical file and stated that:

1. There was no evidence that the Appellant lost any consciousness at the time of the motor vehicle accident.
2. The Appellant was alert and oriented at the time of the accident and recalled all the details of the motor vehicle accident.
3. He was of the opinion that it was highly unlikely the Appellant could sustain an injury or even a mild concussion having regard to the amount of damage caused to the motor vehicle.
4. Having regard to the totality of the medical evidence, he concluded that the Appellant did not sustain any injuries that could result in a psychological or cognitive impairment.
5. There were no cognitive or psychological barriers which could have affected the Appellant's ability to return to work.

The Commission notes that:

1. [Appellant's doctor #1], nine days after the motor vehicle accident stated that his clinical diagnosis was "C & LS spine strain, headaches".
2. He further stated the Appellant was suffering from whiplash WAD2 and prescribed physiotherapy treatments.
3. However, approximately 4 years later in response to a question from the Claimant Adviser Office, he asserted that the motor vehicle accident aggravated the Appellant's mood disorder.

4. He does not explain how a soft tissue injury that the Appellant suffered as a result of the motor vehicle accident could have caused such an aggravation of the appellant's mood disorder.
5. Although [Appellant's doctor #1] concluded the Appellant's pre-existing depression and mood disorder was aggravated by the motor vehicle accident, he does not find that any of the motor vehicle injuries the Appellant sustained caused a permanent enhancement to the Appellant's psychological condition which would have prevented the Appellant from returning to work as a hairdresser.

The Commission finds that upon a review of the Appellant's testimony and all of the medical evidence on the file, the medical opinions of [independent physiatrist], [Appellant's neurologist] and [independent psychologist]:

1. The Appellant had pre-existing depression, and/or a mood disorder prior to the motor vehicle accident.
2. The motor vehicle accident did not cause the Appellant to suffer from any physical or psychological cognitive problems that would have prohibited the Appellant from returning to work as a hairdresser on the 181st day following the motor vehicle accident.
3. In these circumstances the Commission gives greater weight to the opinions of [Appellant's neurologist], [independent physiatrist] and [independent psychologist] than it does to the opinion of [Appellant's doctor #1] in respect to the Appellant's inability to return to work as a hairdresser, as a result of any injuries sustained in the motor vehicle accident.

For these reasons, the Commission accepts the opinions of [independent physiatrist], [Appellant's neurologist] and [independent psychologist] who concluded that the Appellant did not sustain any injuries from the motor vehicle accident that would prevent her from returning to work on the 181st day following the motor vehicle accident. For these reasons, the Commission is satisfied on the balance of probabilities that the Appellant was capable of returning to work on the 181st day after the motor vehicle accident and therefore dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated February 25, 2008 in respect of the non-payment of IRI benefits.

Dated at Winnipeg this 17th day of April, 2012.

MEL MYERS, Q.C.

LEONA BARRETT

LORETTA ROSS