

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-10-074**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Sheldon Claman
Ms Sandra Oakley

APPEARANCES: The Appellant, [text deleted] was represented by Ms Laurie Gordon of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau. Interpreter [text deleted]

HEARING DATES: May 14, 15 and June 11, 2013

ISSUE(S): 1. Whether the Appellant's benefits were properly terminated pursuant to Section 160(a) of the MPIC Act.
2. Whether MPIC is entitled to recover overpayment of Income Replacement Indemnity benefits.

RELEVANT SECTIONS: Section 160(a) and 189(1) 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, [text deleted], was involved in a motor vehicle accident on February 26, 1999. At the time of the accident, the Appellant was a pedestrian, crossing [text deleted], when she was struck by a motor vehicle. As a result of this motor vehicle accident, the Appellant sustained numerous injuries, including an oblique fracture of the proximal fibula, an undisplaced fracture of the right pubic ramus, facial scarring, bruising to her left leg, left knee and chest, concussion

and multiple soft tissue injuries. The Appellant also lost consciousness for a brief period following the accident. After the accident, the Appellant had difficulty walking and standing, as well as difficulty pushing, pulling and carrying because of her injuries. Due to the injuries which the Appellant sustained in this accident, she became entitled to Personal Injury Protection Plan (“PIPP”) benefits pursuant to Part 2 of the MPIC Act.

At the time of the accident, the Appellant was employed in the housekeeping departments of two different hotels. Her duties included cleaning rooms, making beds and working in the laundry department. Due to her injuries, the Appellant was unable to return to her employments and thus qualified for income replacement indemnity (“IRI”) benefits from MPIC.

Following the accident, the Appellant also developed psychological problems related to the accident, including sleep disturbance, depression, anxiety, difficulty concentrating, suicidal thoughts and feelings of helplessness and dependence. The Appellant participated in a number of different rehabilitation programs following the motor vehicle accident, which reported mixed results through 2000 and 2001 addressing her neck and knee pain and her continuing psychological issues. The Appellant also had surgery on her knee during this time period.

At the end of June 2002, the Appellant and her family moved to [text deleted]. She then began seeing rehabilitative and psychological professionals there. The Appellant continued to experience neck and knee pain, as well as symptoms of depression and anxiety after her move. The medical reports on the Appellant’s file do not indicate any consistent improvement in either the Appellant’s physical or psychological condition after the move. The Appellant reported hearing voices telling her to do things during this time. From 2003 to 2005, the Appellant was convicted of several criminal offences, including shoplifting, which increased her anxiety and

depression issues. During this time, the Appellant also had a lot of relationship problems with her husband. Eventually the husband decided to separate from her and he moved out of their home.

In a report dated December 9, 2005, registered psychologist, [Appellant's Psychologist] reported the following with respect to the Appellant's condition:

[The Appellant] reported that her typical weekday is getting up at 7 a.m., having breakfast with her child [text deleted], and then walking with [text deleted] to school. [The Appellant] then comes back home, locks the door, cleans up a little and rests on the sofa. She tries to do some housework but often feels too sore and tired, so she spends most of the day resting and being quiet. At 2:30 p.m., she picks up her daughter from school, goes back home, talks a little with her daughter and encourages her daughter to complete her homework. She then prepares a simple heat-up type of dinner (the dinners are often previously prepared by her daughter-in-law on the weekend), eats dinner, cleans up with her child and then rests. Her daughter-in-law or son visit for a few hours in the evening, clean up the house and [text deleted] is put to bed around 9-9:30 p.m. [The Appellant] goes to bed around 10-10:30 p.m. with her child, and tries to sleep. She has found that she cannot get to sleep alone. Once asleep [the Appellant] often has violent nightmares that awaken her in the night and then she cannot sleep for hours. Finally she falls off to sleep again for a few more hours before awakening in the morning.

Volunteer work has been discussed with [the Appellant], but she feels she cannot pursue work until the charges are resolved, her medications are more stabilized, she starts to feel better about going out, she can be around people and the weather gets better. [The Appellant] feels that she will not be ready for volunteer work until March/April 2006. She finds that her physical symptoms get very bad in the wintertime and her face especially cannot handle the cold weather.

[The Appellant] reported that her symptoms include intense knee, neck and shoulder pain. Her left hand has become so sore that she can't move it at times. She has a constant headache and her face bones get so sore that she ends up crying in pain. [The Appellant] feels quite depressed and anxious. She feels very scared and she wants to avoid people and activities outside her home. She experiences her body shaking in fear and she easily gets tired and exhausted. [The Appellant] experiences continuous high anxiety and a constant sense of dread. She has violent nightmares and death dreams. [The Appellant] continues to ruminate about her problems, worry a lot and be extremely tense and edgy. She still has racing thoughts and difficulty controlling her physical reactions (e.g. shaking, accelerated heart rate, vomiting).

In a report dated March 29, 2006, [Appellant's Psychiatrist #1] stated the following with respect to the Appellant's condition:

Considering the chronicity of her condition, I believe that the prognosis is quite guarded. It is unlikely that she will return to a functional level which would allow her to lead a normal life and keep employment as her functioning limitations are quite considerable. Perhaps the best that we can aspire to is to help her to take good care of herself and lead a more leisure-oriented life with minimum amount of stress.

A further report was received from [text deleted] [Appellant's Psychologist] on October 28, 2006. In that report, [Appellant's Psychologist] stated that:

[The Appellant] has a number of barriers to competitive employment. She is fearful of being around people, easily gets upset in her interactions with people, readily gets angry and avoids people. She has chronic pain in her right knee, neck and shoulders and her bones get sore. She easily gets tired and fatigued. She has a constant headache. She feels quite depressed and anxious. She has a constant sense of dread. She ruminates about her problems and worries a lot. [The Appellant] use to do volunteer work at the [text deleted] Committee store and she liked the work sorting clothes, etc. as long as it didn't involve much people contact. She reportedly would do her work, but not interact much with the rest of the staff. [The Appellant] feels that she would like to return to this type of volunteer work. She states that she likes the feeling of working and doing something, but doesn't want to get into any more trouble. She avoids people interaction, is forgetful, angers easily, and often says and does the wrong thing.

[Appellant's Psychologist] recommended continuing the Appellant's psychiatric medication regime, as well as ongoing counselling to stabilize her condition and re-establish her volunteer work. He also recommended that the Appellant participate in occupational therapy.

[MPIC's Psychologist], psychologist of MPIC's Health Care Services team, reviewed the Appellant's file on November 16, 2006. It was [MPIC's Psychologist's] opinion that the Appellant's condition would be considered chronic and that she would be unlikely to return to a functional level where employment was a possibility.

[Appellant's Psychologist] provided a further report dated July 27, 2007, in which he stated that:

The DSM-IV diagnosis for [the Appellant] remains major depression (chronic – medium to severe with medication), generalized anxiety disorder (chronic – medium to severe with medication), pain disorder, agoraphobia (medium with medication) and psychotic episodes (in remission with medication). [Appellant's Doctor] also diagnosed Post-Traumatic Stress Disorder in the report of May 31, 2007. [The Appellant] continues to be a vulnerable fragile individual with minimal coping skills. She has required considerable psychological and psychiatric supports in order to maintain her mental stability and she needs ongoing psychotropic medication therapy. Her poor coping skills do not allow for her to deal effectively with the normal ebb and flow of relationships and life. Her current G.A.F. = 40.

[The Appellant] continues to report the same physical symptoms which include intense knee, neck and shoulder pain, right hand soreness, constant headaches, and facial bone pain.

[The Appellant] continues to report feeling depressed and anxious. She feels scared and avoids people and activities outside her home. She experiences her body shaking in fear at times and she easily gets tired and exhausted. [The Appellant] experiences high anxiety, a sense of dread and has violent nightmares and death dreams. [The Appellant] continues to ruminate about her problems, worry a lot and be extremely tense and edgy. She still has racing thoughts and difficulty controlling her physical reactions (e.g. shaking, accelerated heart rate, vomiting). She doesn't trust people, gets easily upset and angry with people, and often says and does the wrong thing.

In regards to whether [the Appellant] has plateaued in her response to therapy, she has been stable over the past nine months, but has made little progress towards further improved functioning or occupational goals. She has been able to maintain her daughter and herself within the home environment and get her daughter to school. She has been functional enough to maintain a household, cook and cleanup, but seldom would go out of the home except for doctor or psychologist's appointments, taking her daughter to and from school, and grocery shopping with her adult son or daughter-in-law.

On March 4, 2008, MPIC's case manager issued a decision on permanent impairment benefits payable to the Appellant. Amongst other permanent impairments, the Appellant was awarded a permanent impairment benefit for a mental disorder in the amount of 30%.

On August 11, 2009, MPIC's case manager called the Appellant to update her file. The case manager questioned the Appellant as to how she was managing her life and what she did to keep busy. The Appellant replied that she had a friend who has helped her with her problems and talks to her. The friend comes over to her house and she goes to their family business and this

helps to keep her busy. The Appellant advised the case manager that she helps them sometimes with their business - [text deleted]. Sometimes she drinks coffee and sometimes she helps at the restaurant. She sees her friend every day whether at the business or at home. She does not get paid for this work – her daughter plays on the computer while they are there and she volunteers in the restaurant. The case manager suggested to her that maybe she should be getting paid, but she said no, it is a family business and she just helps out.

Thereafter, MPIC retained an investigation firm to perform video surveillance of the Appellant to verify her condition. As set out in the Internal Review Decision of April 16, 2010, the portions of the surveillance that are relevant for this proceeding are summarized as follows:

August 8, 2009: You (*the Appellant*) arrived at [text deleted] at 10:18 a.m., opened the door with a set of keys you carried, and proceeded to set out tables and chairs. Between 10:55 a.m. and 11:24 a.m., you were observed putting [text deleted] into a display case. You also served several customers that morning. You were observed serving customers and picking up trash in the afternoon and remained at [text deleted] until at least 4:17 p.m.

August 10, 2009: You arrived at [text deleted] at 9:57 a.m., opened the door with a set of keys you carried, collected the mail and proceeded to set out tables and chairs. You then began making [text deleted] dough alone by running the dough through a press. You then prepared the [text deleted] and carried them to the oven. Another person arrived at the restaurant, and you walked around the store for a period, and then began serving customers as they began entering. In the afternoon, you served customers and were observed operating the slicer for more than 30 minutes. You left the restaurant at 5:20 p.m.

August 11, 2009: You arrived at [text deleted] at 9:57 a.m., opened the door with a set of keys you carried, collected the mail and proceeded to set out tables and chairs. You then began making [text deleted] dough alone by running the dough through a press. You then prepared the [text deleted] and carried them to the oven. Another person arrived at the restaurant, and the two of you served customers. You also made pizzas and served customers in the early afternoon, before picking up a large box and leaving the restaurant at 2:34 p.m.

August 12, 2009: You arrived at [text deleted] at 9:57 a.m., opened the door with a set of keys you carried, and proceeded to set out tables and chairs. You then began making [text deleted] dough by running the dough through a press, at first doing this alone, and then helping another individual who had arrived at the restaurant. You continued to make [text deleted] that morning, and also cleaned the restaurant. You served customers

throughout the lunch hour and the early afternoon, as well as continuing to clean. You also peeled vegetables and removed [text deleted] from the oven. You remained behind the counter for much of the afternoon, and did not leave the restaurant until 6:30 p.m.

August 27, 2009: You were seen outside [text deleted] alongside several other people at approximately 8:00 p.m., and you were observed to pull what appeared to be a heavy object such as a dolly into the restaurant.

September 10, 2009: You arrived at [text deleted] at 10:38 a.m., opened the door with a set of keys you carried, collected the mail and proceeded to set out tables and chairs. You were then seen serving customers at approximately 3:30 p.m. that afternoon.

September 11, 2009: You arrived at [text deleted] at 10:38 a.m., opened the door with a set of keys you carried, collected the mail and proceeded to set out tables and chairs. You were then seen serving customers that afternoon.

November 6, 2009: You arrived at [text deleted] at 10:38 a.m., opened the door with a set of keys you carried, collected the mail and proceeded to set out tables and chairs. You were observed in that store that afternoon, and were seen preparing food at approximately 5:10 p.m. You left the restaurant at 6:11 p.m.

November 9, 2009: You arrived at [text deleted] at 10:38 a.m., opened the door with a set of keys you carried and proceeded to set out tables and chairs. You were behind the counter talking to someone at 5:18 p.m. and then you were sitting and talking for about 15 minutes starting at 5:32 p.m. At 6:36 p.m., you and two other (sic) got into a truck and drove to [text deleted], and wee (sic) then seen returning to the truck with groceries at 7:45 p.m. You then arrived at [text deleted] at 7:52 p.m., and returned to the truck with multiple cases of drinks at 8:48 p.m. You loaded these cases into the truck with some help. You returned to [text deleted] at 9:02 p.m., and helped unload the drinks onto the flatbed cart, which you then pushed into the restaurant. You then left the restaurant.

[Appellant's Psychologist] provided a Discharge Report dated September 9, 2009, in which he stated that:

[The Appellant] has attended psychological counselling sessions whenever she felt necessary since my update report of July 27, 2007. She requested a few sessions as issues arose but has now not requested counselling since September 19, 2008. Periodic telephone contacts from my office to set up another counselling appointment for the purpose of reviewing her situation have been declined. [The Appellant] has stated that she is functioning, not experiencing any major psychological or psychiatric difficulties and is managing her pain and physical disabilities.

As I have not seen [the Appellant] since September 2008 I cannot accurately describe the details of her psychological situation since that time. At that time, she reported staying home most of the time, walking her child to and from school, and doing the basics around the home with her child's assistance. She was on her same medication regime and sleeping about 6 to 7 hours with awakenings. She was living in an apartment in [text

deleted] with her child. [The Appellant] reported that she only wanted psychological counselling as needed and would call in to arrange as necessary.

Since September 2008 she has not called and when contacted by my office on a few occasions in 2009, [the Appellant] indicated that she was doing okay and didn't feel the need for a psychological counselling appointment.

[Appellant's Psychologist] felt that the Appellant was able to manage her situation and maintain herself. He recommended that her psychiatric medication regime be maintained and that psychological counselling only be re-initiated if her situation destabilized or her condition deteriorated.

On September 29, 2009, the Appellant's son, [text deleted], filled out a "Claimant's Reported Level of Function" form. The form reported the Appellants' function as follows:

- Walking: 30-60 minutes
- Standing: 30-60 minutes
- Bending: Limited
- Squatting: Partial Squat
- Sitting: No difficulty
- Repetitive Motion: not sure, not done in a long time
- Twisting: No difficulty
- Lifting – 5-10 lbs
- Overhead Lifting – 0-5 lbs
- Pushing & Pulling: Push - 0-10 lbs
- Twisting: Push – 0-10 lbs
- Psyche Issues: Depression, fears (driving, crowds, etc.) and anxiety
- Difficulty Moving Neck: sometimes back of head, neck, specially when she is (?) out
- Dizziness: when getting up
- Miscellaneous – other limitations: very limited

Between September 23, 2009 and December 6, 2009, the Appellant's son and/or daughter, also filled out a number of "Daily Activity Logs" showing what she had done on those days. The majority of those logs note that the Appellant attended at [text deleted] to drink coffee and talk, usually arriving between noon and 1:00 p.m. Occasionally the logs show that the Appellant helped clean up [text deleted] or helped with dishes.

On November 25, 2009, [MPIC's Psychologist] of MPIC's Health Care Services prepared a report providing his opinion on whether the Appellant had provided false and inaccurate information to MPIC based on the video surveillance. Based on the review of the file documentation and video surveillance information, [MPIC's Psychologist] opined that the Appellant had provided false and inaccurate information regarding her functional ability and employment capabilities. [MPIC's Psychologist] further stated that the Appellant's Reported Level of Function form (dated September 29, 2009), as well as the various Daily Activity Logs, were not consistent with the Appellant's observed functional abilities on the days of surveillance. She did not appear to be "very limited" in her daily activities on the video surveillance. [MPIC's Psychologist] also provided his opinion that there was no indication of a psychological condition that would prevent the Appellant from returning to her pre-accident employment, as the surveillance demonstrates that she was capable of a sedentary to light duty job for 8 hours per day.

On December 22, 2009, MPIC's case manager wrote to the Appellant to advise her of the termination of her PIPP benefits for knowingly providing MPIC with false or inaccurate information with respect to the extent of her injuries in contravention of Section 160(a) of the MPIC Act. The case manager found that the level of activity demonstrated on the video tape surveillance contradicted the advice and information that the Appellant had provided in the September 29, 2009 Level of Function form and in the Daily Activity Logs. As a result, the case manager terminated the Appellant's entitlement to PIPP benefits in accordance with Section 160(a) of the MPIC Act.

The case manager also found that the Appellant demonstrated the ability to function at a level equivalent (or higher) to perform her pre-accident job related duties. Accordingly, the case

manager found that had the Appellant's benefits not ended under Section 160(a), her entitlement to IRI benefits would have ended under 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 found that the Appellant was responsible for reimbursing MPIC for monies paid to her subsequent to September 29, 2009 which was calculated to be \$3,742.89. 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 December 22, 2009. The Internal Review decision of April 16, 2010 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. However, the Internal Review Officer found that there was insufficient evidence on the file to conclude that the Appellant was capable of holding her pre-accident employment. She found the functional abilities demonstrated by the Appellant in the video surveillance demonstrated a distinct change in circumstances from her previously reported capabilities. The Internal Review Officer noted that in the video surveillance, the Appellant was regularly dealing with customers, in terms of taking their order, providing them with their [text deleted], collecting their money and giving them their change. This was in marked contrast to the previous psychological reports that had described the difficulty the Appellant had in being around people due to her depression and anxiety. Given these work patterns, the Internal Review Officer concluded that the Appellant did provide false or inaccurate information to MPIC when

she described herself as just helping out at the restaurant. The Internal Review Officer also found that MPIC was entitled to reimbursement for the excess payment of \$3,742.89 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 benefits were properly terminated pursuant to Section 160(a) of the MPIC Act; and
2. whether MPIC is entitled to reimbursement of the overpayment.

Relevant Legislation:

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.

At the hearing of this matter, the Commission heard testimony from the following individuals.

The Commission does not intend to recite all of the evidence adduced; however, it was considered in its entirety. A summary of the evidence is set forth below as follows:

1. [Text deleted] - the Appellant

The Appellant testified that she was not fluent in English. When she communicated with MPIC, an interpreter was provided by MPIC. The Appellant testified that she relied upon her son, daughter and daughter-in-law to fill out forms and paperwork when dealing with MPIC. With respect to the Reported Level of Function forms, the Appellant testified that her son, [text deleted], completed the forms and returned them to MPIC.

The Appellant testified that sometime in early 2009 she was approached by [Appellant's Friend #1] at an [text deleted] grocery store in downtown [text deleted]. The Appellant testified that she was suicidal at that time. She had separated from her husband of 30 years and her daughter had stopped talking to her. [Appellant's Friend #1] introduced her to her daughter, [Appellant's Friend #2] and her daughter's husband [text deleted]. She and [Appellant's Friend #2] became very good friends. [Appellant's Friend #2] and her family were very helpful to her and she considers [Appellant's Friend #2] like a sister. [Husband of Appellant's Friend #2], [Appellant's Friend #2] and [Appellant's Friend #1] did not want her to be alone because of her suicidal thoughts. They told her to come to the store and be with them at the store. After getting to know them, she wanted to volunteer in their store.

She advised that she helped out in the restaurant, she put out the tables in the morning and took the chairs outside. She also confirmed that she looked after customers. The Appellant further testified that she would accompany [Appellant's Friend #2] when they went shopping. The Appellant was willing to help out at the [text deleted] because [Appellant's Friend #2] and her husband had been so good to her. They would drive her places and sometimes paid for her groceries. She became very close with them. The Appellant admitted that she did serve customers, she was not scared of serving customers and interacting with people. At that time, it

was an ordinary thing to serve customers. She stated she really did not have to carry on a conversation - customers knew to ask for what they wanted and she was able to provide that to them. She was never required to carry on long conversations with the customers, but rather just casual conversations.

The Appellant confirmed that in September 2009 she did have ongoing psychiatric issues including depression, post-traumatic stress, fears of driving, crowds and anxiety. She maintained that her son assisted her in completing the forms for MPIC.

2. [Appellant's Friend #2]– Appellant's friend and co-owner of [text deleted]

[The Appellant's friend #2] confirmed that she was the co-owner of [text deleted] for approximately the last 15 or 16 years. She testified that they had no employees and it is a small family business. She met the Appellant through her mother who introduced them and they became friends. She confirmed that she and the Appellant are close friends. She advised that the Appellant is free to come to the [text deleted] anytime she likes. In 2009, when her own daughter had a child the Appellant helped at the [text deleted] in her absence (as she was assisting her daughter after the birth). The Appellant helped by cleaning tables. [The Appellant's friend #2] testified that the Appellant was forgetful and needed to be supervised as she often made mistakes with money. [The Appellant's friend #2] testified that the Appellant was never on a schedule as she could not take any stress or pressure. She also testified that she did not pay the Appellant for helping out at the restaurant, the Appellant was not an employee of the [text deleted] business. The Appellant did have keys to the front door. She and her husband trusted the Appellant with opening the restaurant, putting out the chairs and tables and getting things set up in the morning.

3. [Appellant's Friend #1] – Appellant's friend

[Appellant's Friend #1] confirmed that she had met the Appellant at a local [text deleted] store. She saw that the Appellant was physically upset and she befriended her. She took the Appellant to her daughter's [text deleted]. After she introduced the Appellant to her daughter, she encouraged her to come back. She tried to help her out because she felt sorry for her. She has known the Appellant for approximately four or five years and they continue to be friends.

4. [Text deleted] – the Appellant's son

The Appellant's son testified that he is the closest of the three children to his mother. He is involved with most of his mother's affairs. He did confirm that he completed most of the MPIC forms for his mother. He deals with her bills and his wife also assisted with paperwork from time to time. [Appellant's son] testified that his wife is better at paperwork than he is. He and his wife complete forms and paperwork for his mother because she cannot read or write English.

With respect to the Claimant's Reported Level of Function form, [Appellant's son] testified that with respect to some of the answers he did ask his mother and some of it he just filled out on his own. He filled out what he thought the answers were to the best of his ability. He expressed deep regret about how he had completed the forms, as he was not serious about filling out the forms accurately. He testified that he did not go through each and every question with his mother as he should have done. With respect to the Daily Activity Logs [Appellant's son] testified that he and his sister, [text deleted], filled out the forms. He did not have the patience to go through each form carefully and he did not take the forms as seriously as he should have.

[Appellant's son] testified that when his mother began attending at [text deleted], that was the best thing that happened to her. She had somewhere to go and someone to spend her time with.

His mother could speak to them in her language and they provided a support system for her. He stated that he was aware that his mother helped out at [text deleted] and she was happy to help out at the [text deleted]. [Appellant's son] was not aware exactly what she was doing at the [text deleted], he did know that she was cleaning tables and helping out with customers.

5. [Husband of Appellant's Friend #2] – co-owner of [text deleted]

[Husband of Appellant's Friend #2] testified that he was a co-owner of [text deleted] and it was a small family business started 16 years ago. He advised that it was a small restaurant, not super busy, [text deleted]. He knew the Appellant through his wife as they were close friends. He met her through his mother-in-law who brought her to the store. He advised that the Appellant came to the restaurant every day for company. She was very depressed when she first came but as she continued to come to the store for companionship, she became better. Originally she was a very depressed person and suicidal. However, her life started to turn around after about 6 or 7 months of coming around to the [text deleted]. When she visited at the [text deleted], the Appellant did what she could – wash dishes, clean tables, helping out his wife. She came to the [text deleted] as often as she wanted. However, the Appellant was not an employee and they did not pay her for her work at [text deleted].

6. [Text deleted] – Psychiatrist #2

[Appellant's Psychiatrist #2] is the Appellant's current treating psychiatrist. He began treating the Appellant on October 18, 2011, after she was referred to him for psychiatric assessment and treatment. [Appellant's Psychiatrist #2] testified that the Appellant was completely medically and psychiatrically disabled following her motor vehicle accident in February 1999. Initially, [Appellant's Psychiatrist #2] saw the Appellant every 10 days to 2 weeks. He now sees her approximately once per month. During their sessions, he asks her about what is happening in her

life, any changes in appetite, sleep or energy level. He also checks into her medications and does supportive psychotherapy. [Appellant's Psychiatrist #2] testified that his opinion was that the Appellant continued to be totally disabled, not only for her own occupation but for any other occupation. He found her quite helpless and hopeless. Further, he stated that she is not in a state to be trained for any other fruitful occupation. [Appellant's Psychiatrist #2] testified that he spent a lot of time going through all the reports in her file and reviewing her history. Based upon his contact with the Appellant and his extensive review of her file, he maintained his opinion that she was completely disabled. However, [Appellant's Psychiatrist #2] had not reviewed any of the surveillance material and so he was unable to comment on the surveillance report. He further stated that the surveillance report was not relevant to his assessment as he relied upon his patients own reports of their functional ability.

7. [MPIC's Psychologist] – psychological consultant to MPIC's Health Care Services

[MPIC's Psychologist] confirmed that the Appellant had a psychological condition as a result of the motor vehicle accident. However, his opinion changed with respect to the degree of her impairment once he saw the surveillance video. Based upon his review of the surveillance video, [MPIC's Psychologist] testified that the Appellant did not appear to be an individual who was unemployable. She had a set of keys and opened the restaurant. She demonstrated the tolerance to work an entire day. In the surveillance video, the Appellant appeared to be very functional and she did it consistently over many days. Even if she had ongoing pain behaviours, [MPIC's Psychologist] felt that she was clearly able to function day in and day out and did not exhibit significant pain behaviours on the video tapes. [MPIC's Psychologist's] opinion was that her ongoing psychiatric diagnoses did not significantly impair her functional ability in 2009.

Appellant's Submission:

The Claimant Adviser on behalf of the Appellant submits that the Appellant did not provide false or inaccurate information to MPIC. Rather, she maintains that the Appellant was up front with MPIC, she stated that she just helped out at the restaurant and she was not an employee of the restaurant. Relying upon the testimony of the owners of [text deleted], the Claimant Adviser maintains that the Appellant was not an employee of the restaurant, but rather attended the restaurant when she felt like it and did odd jobs at the restaurant.

With respect to the Claimant's Reported Level of Function forms, the Claimant Advisor argues that the Appellant did not personally complete those forms. Rather it was her son. She claims that MPIC did not explain the importance of the forms to the Appellant or to her son. She contends that MPIC's case manager should have filled out the forms with the Appellant directly, with the assistance of a translator, because of the seriousness of the forms. The Claimant Adviser maintains that MPIC had the opportunity to explain that these forms were extremely important, but they did not. As a result, the Appellant and her son did not take the forms as seriously as they should have.

The Claimant Adviser maintains that the Appellant did not mislead MPIC about the fact that she was going out and visiting [text deleted]. She admitted that to her case manager and to her physicians. The Claimant Adviser submits that the Appellant did not provide false information. The Appellant does not adequately communicate and understand English. She did not complete the forms herself and therefore she did not knowingly provide the false information on the forms. She did not misrepresent her psychological condition and she continues to have an ongoing psychological condition as confirmed by her psychiatrist, [Appellant's Psychiatrist #2]. She also did not hide the fact that she was at [text deleted] helping out, but disclosed that to her case

manager. The Claimant Adviser argues that the Appellant's PIPP benefits should be reinstated as the Appellant did not provide false or inaccurate information to MPIC.

Alternatively, the Claimant Adviser argues that the Commission should substitute a suspension for the outright termination of the Appellant's PIPP benefits. She notes the following:

- the Appellant did not complete the forms personally;
- the Appellant was up front with MPIC about visiting [text deleted];
- the Appellant has ongoing psychological issues; and
- the Appellant did not state that she was limited with what she did at [text deleted].

Based on those factors, the Claimant Adviser argues that a three month suspension should be imposed as a sufficient penalty to the Appellant.

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. Counsel for MPIC notes that in August 2009, after MPIC had paid more than a decade of benefits, video surveillance revealed that the Appellant had misrepresented her condition. Counsel for MPIC contends that the video surveillance clearly conflicts with the statements provided by the Appellant. The video surveillance clearly demonstrates a person who is functioning beyond that reported in the Claimant's Reported Level of Function form and the Daily Logs. Both the Reported Level of Function form and the Daily Logs suggest an individual with severe limitations. However, based upon the video surveillance, that was not the case with the Appellant's functional abilities.

Counsel for MPIC argues that the Appellant's testimony and her general presentation were evasive. She did not answer questions directly. Further, she submits that the Appellant was not

believable. Counsel for MPIC argues that the Appellant is an individual who makes excuses for financial gain and benefit and was not a credible witness. Counsel for MPIC submits that the Appellant will manipulate the truth and circumstances for personal financial gain. The Appellant shoplifted, assaulted a security guard, was found in contempt of court and demonstrated a sense of entitlement. She submits that the Appellant cannot be believed.

Counsel for MPIC argues that at all times the Appellant knew there was an obligation to be truthful with MPIC and she was not. The Appellant minimized the work she did at [text deleted]. She was not merely just helping out. It was significantly more than that. Counsel for MPIC maintains there were no pain behaviours exhibited on the video surveillance. She contends that even though the Appellant did have ongoing psychological issues, she was presenting herself to MPIC as severely more disabled than she was. Yet, on the surveillance, the Appellant was moving quickly setting up the restaurant and there were no apparent difficulties. Counsel for MPIC contends that the Appellant misrepresented her state and provided false information on material issues sufficient to warrant the termination of her benefits. She maintains that a mere suspension is not appropriate. This case involves severe misrepresentation by the Appellant, even her testimony was not believable. She has not satisfied MPIC that she was believable.

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 video surveillance evidence established that the Appellant knowingly provided MPIC with false information and that she misrepresented her injuries and level of function to the Corporation contrary to Section 160(a) of the MPIC Act. Counsel for MPIC maintains that the Appellant should not be relieved from the overpayment which represents monies that were actually paid to

her subsequent to September 29, 2009. Counsel for MPIC maintains that MPIC is entitled to reimbursement of the excess monies paid to the Appellant.

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 Claimant Adviser on behalf 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 as of September 29, 2009.

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 form dated September 29, 2009 and the information which she provided in the Daily Activity Logs. The fact that the Appellant did not personally complete the forms does not relieve her of the obligation to ensure that the forms were accurate. She was aware of the contents of the forms. Her children completed those forms with her consent, knowledge and direction. Ultimately, the Appellant is responsible for the information provided on the forms.

A Claimant's Reported Level of Function form was completed by the Appellant's son on September 29, 2009 indicating that the Appellant did not drive and that she continued to have depression, fears, anxiety and was noted to be "very limited". It also indicated under the "Repetitive Motion" section of this document that "not sure, not done in a long time". It was further stated that the Appellant has dizziness "when getting up". Based upon this information,

MPIC concluded that the Appellant continued to be very limited in her daily activities due to her ongoing psychological and physical issues.

A series of Daily Activity Logs starting at September 23, 2009 and running until October 7, 2009 summarize the Appellant's daily activities on these days. On September 24, 2009 it was noted that the Appellant was at home, she then went grocery shopping with her friend, [Appellant's Friend #2]; she then went to [text deleted] where she drank coffee and talked. She stayed at [text deleted] from approximately noon until 3:00 p.m. when she left to pick her daughter up at school. She then returned to [text deleted] to help her friend clean up the tables between 3:00 p.m. and 5:00 p.m. when she went home to make supper. On September 28, 2009, the Appellant indicates that she went to [text deleted] again where she drank coffee and talked. She then went with her friend to the [text deleted] grocery store and then returned to [text deleted] to help her friend clean tables. It was also indicated that she helped her friend with dishes at [text deleted].

The Daily Activity Logs indicate that the Appellant appears to be going to [text deleted] some afternoons for a few hours where she may help with dishes, clean tables, drink coffee and talk. According to the Daily Activity Logs, she typically left in the middle of the afternoon to go and pick her daughter up from school during her outing to [text deleted].

In contrast, the videotaped evidence was clearly inconsistent with the Appellant's reported level of function. Video surveillance of the Appellant was obtained on August 8, 10, 11 and 12, 2009 as well as August 27, September 10 and 11, 2009 and on November 6 and 9, 2009.

On the morning of August 8, 2009 at approximately 10:18 a.m., the Appellant is noted to be carrying chairs outside of [text deleted] for customers to sit on. Further surveillance at 10:55

a.m. shows the Appellant engaging in behaviours consistent with the operation of the [text deleted], including placing [text deleted] in a display case, serving customers, cleaning and making [text deleted]. It appears that the Appellant is working by herself in the restaurant at this time. Subsequently at 11:34 a.m., on this date, the Appellant is noted to be walking by herself to the [text deleted] grocery store nearby where she buys several items and then returns to the restaurant. The Appellant continued to work at [text deleted] until she left shortly after 5:00 p.m.

Review of the surveillance on this day indicates that the Appellant essentially worked at the [text deleted] on August 8, 2009 for the entire day. The Appellant's demonstrated abilities on this date are markedly inconsistent with an individual considered completely unemployable due to her psychological condition. Furthermore, the information provided by the owners of the [text deleted] indicated that the Appellant occasionally comes for coffee and may help out in the restaurant, but that she is not working there, nor is she capable of working anywhere due to her anxiety, forgetfulness and unreliability. This information seems obviously inconsistent with the Appellant's demonstrated behaviour as observed on the surveillance video.

On August 10, 2009, the Appellant again attends the [text deleted] at 9:57 a.m., where she unlocks the restaurant. At 9:58 a.m., the Appellant is observed moving chairs and tables to the sidewalk in front of the restaurant. The video surveillance on this day shows that the Appellant is engaging in tasks which are consistent with the operation of the [text deleted]. Once again, the Appellant's behaviour as observed on the video surveillance is not consistent with someone who is considered completely unemployable nor is it consistent with someone who only occasionally volunteers or helps out at the [text deleted]. It is obvious from this video surveillance that the Appellant is responsible for opening the [text deleted] in the morning and staying to work there throughout the day. On this particular day, after arriving at approximately 10:00 a.m., the

Appellant leaves the restaurant at 5:36 p.m., essentially putting in a full day's work.

The surveillance information indicates that the Appellant engaged in essentially the same behaviour on August 11, 2009 where she arrived at the restaurant at approximately 10:30 a.m., opened the restaurant by taking in flyers and taking out the tables and chairs for the front of the restaurant. The Appellant continued to work at the restaurant as she had done on previous days, but on this occasion she left the restaurant at approximately 2:30 p.m. carrying a medium size box where she entered a vehicle with some other individuals and was subsequently driven to her home.

On August 12, 2009, the Appellant is, once again observed opening the restaurant at approximately 10:55 a.m., when she disarms the alarm system and carries the patio tables and chairs outside. She continues to work in the restaurant throughout the day, performing tasks consistent with the operation of this business. The Appellant is observed to work in the [text deleted] until she leaves at approximately 6:30 p.m.

Further surveillance of the Appellant taken on September 10, 2009 shows the Appellant arriving in the morning at 10:17 a.m. where she proceeds to open the restaurant and place the tables and chairs as she has done previously. Further surveillance of the Appellant throughout the day indicates that the Appellant is working in the restaurant and that she subsequently leaves the restaurant at 4:28 p.m. with her daughter.

On September 11, 2009, the Appellant once again opened the restaurant at approximately 10:30 a.m. and then continues on with her daily routine of serving customers, making [text deleted] and engaging in behaviour consistent with the running of the restaurant. On this day, the Appellant

left the restaurant at approximately 3:00 p.m.

Further surveillance of the Appellant was obtained on November 6, 2009 at which time she once again arrives at the [text deleted] restaurant at 10:38 a.m. where she unlocks the front door of the business and carries out 4 chairs and 2 tables setting them up outside. On this date, the Appellant worked at the [text deleted] restaurant for approximately seven hours where she was noted to operate the cash register, make [text deleted] and serve customers. The Appellant subsequently left the restaurant shortly after 6:00 p.m. and returned home with her daughter.

On November 9, 2009, the Appellant arrives at the restaurant at 10:43 a.m., she then proceeds to open the business as she has done previously. She is observed working at the [text deleted] throughout the day and at approximately 12:35 p.m. she enters the local [text deleted] grocery store where she buys milk and returns to the [text deleted] restaurant.

At 6:35 p.m., the Appellant leaves the [text deleted] and enters a vehicle where she travels with several other individuals to a local [text deleted] store. At the [text deleted], they buy numerous items which are then placed in the vehicle. The vehicle then travels to a [text deleted] store where they buy further grocery items. The Appellant and the other individuals in the vehicle then return to the [text deleted] restaurant at approximately 9:00 p.m. where they unload groceries from the truck. The Appellant unloads numerous flats of soda onto a cart in a repetitive fashion which the Appellant then pushes into the [text deleted] restaurant. The Appellant then assists another individual moving tables and chairs back into the restaurant and then the Appellant departs the restaurant at 9:13 p.m. Clearly the Appellant was quite active on this day arriving at the [text deleted] at 10:43: a.m., working at the [text deleted] throughout the day and then assisting in buying supplies for the restaurant at a local [text deleted] and [text

deleted]. She subsequently leaves the restaurant approximately 11 hours later. Once again, the Appellant's observed behaviour on this day is not consistent with an individual who would be considered completely disabled from employment.

Undoubtedly, the videotaped evidence presents significant differences between the Appellant's self-reports and the activity demonstrated during the surveillance. The Commission finds that:

1. the information that the Appellant presented to her case manager 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 the case manager and her observed activities on the videotaped surveillance.

The Commission finds that the Appellant repeatedly stated to MPIC that her activities at [text deleted] were limited to simply helping around the restaurant and that, if she was not able to help, she simply sat, drank coffee and talked. In contrast, the surveillance video clearly shows that the Appellant is carrying out nearly all of the tasks that would be expected of an employee of the restaurant. The Appellant had a set of keys to the restaurant which she used to open the restaurant before anyone else arrived. The Appellant was observed on multiple occasions preparing dough and [text deleted], placing [text deleted] in the oven to cook, removing them and placing [text deleted] in the display case. The Appellant also regularly interacted with customers, particularly during the lunch hour. The Appellant was seen buying supplies for the restaurant. She also operated restaurant machines, including the slicer. This range of tasks goes far beyond how she described her activities at the restaurant. Additionally, the Appellant was regularly dealing with customers, in terms of taking their order, providing them with their [text deleted], collecting their money and giving them change. This is in marked contrast to the Appellant's report of fears of crowds and anxiety. In these circumstances, the Commission finds

that there was false, inaccurate and misleading information provided by the Appellant to MPIC.

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 Psychologist] was unable to identify the job demands of a hotel housekeeper and laundry worker. As a result, the Commission finds that there is a lack of evidence to establish that the Appellant could work as a hotel housekeeper and laundry worker in September 2009. Accordingly, we find that the termination of her benefits pursuant to Section 110(1)(a) is not supportable.

Additionally, the Commission finds that the Appellant received an overpayment of IRI benefits after September 29, 2009 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 April 16, 2010 is therefore confirmed.

Dated at Winnipeg this 22nd day of August, 2013.

YVONNE TAVARES

DR. SHELDON CLAMAN

SANDRA OAKLEY