

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-16-021**

PANEL: Ms Laura Diamond, Chair
Ms Janet Frohlich
Dr. Arnold Kapitz

APPEARANCES: The Appellant, [text deleted], was represented by
Ms Zilla Jones;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Trevor Brown.

HEARING DATE: September 6, 2018

ISSUE(S): Whether the Appellant is entitled to Income Replacement
Indemnity (IRI) benefits;
Whether the Appellant is entitled to further Personal Injury
Protection Plan (PIPP) benefits.

RELEVANT SECTIONS: Section 83(1) and 136(1) of The Manitoba Public Insurance
Corporation Act ('MPIC Act');
Section 8 of Manitoba Regulation 37/94 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

Background:

The Appellant was the driver of a vehicle involved in a motor vehicle accident (MVA) on November 19, 2014. In his application for compensation he described his injuries as a sore back, neck, shoulders, head and toes, with most of the pain coming from the left side.

On March 1, 2015 he reported a second MVA. The Appellant then reported further MVAs; one on June 22, 2015 with injuries to his neck and one on June 28, 2015 with injuries described as left side of neck/lower back.

At the time of the MVAs the Appellant was on a disability claim with the Workers Compensation Board (“WCB”) for which he received partial wage loss compensation. He indicated that he was allowed to earn up to \$1,400 a month in wages within his restrictions and stated that he was a self-employed scrap metal collector.

The Appellant attended to his general practitioner and received medical notes advising him to remain off work due to his injuries, which included a diagnosis of cervical, left shoulder and lumbar strain.

MPIC requested a copy of the Appellant’s WCB claim and MPIC’s Health Care Services medical consultant reviewed his files to provide an opinion regarding the Appellant’s work capacity. The consultant requested further information and, following a review of reports from [text deleted] (the Appellant’s general practitioner) and [text deleted] (sports medicine physician), the consultant concluded that the medical evidence did not support the position that the Appellant developed objective physical impairments secondary to the MVAs which would prevent him from working as a scrap metal collector. The consultant also opined that the Appellant had recovered from medical conditions causally related to the MVAs such that further supervised care or pharmacologic interventions were not medically required.

On November 12, 2015, the Appellant's case manager issued a decision denying his request for income replacement indemnity (IRI) benefits. That decision also ended his entitlement to further personal injury protection plan (PIPP) benefits.

The Appellant sought an internal review of the case manager's decision. On February 2, 2016, an Internal Review Officer (IRO) provided the Appellant with a decision which upheld the case manager's decision. The Internal Review Decision (IRD) indicated that the physical job demands of the Appellant's pre-accident employment as a scrap metal collector would have been limited by his permanent wrist restrictions (arising out of his WCB injury). His job involved mostly driving, with a coworker providing assistance. The IRO relied on the opinion of MPIC's medical consultant. The medical evidence on file did not support that the Appellant sustained an MVA related injury that would render him entirely or substantially unable to perform the essential duties of his employment as a scrap metal collector. Further, he agreed with the case manager's decision, supported by the opinion of MPIC's medical consultant that the medical evidence did not show that current medical conditions caused by an automobile or use of an automobile would require further benefits.

It is from this decision of the IRO that the Appellant has now appealed.

Issue:

The issue before the Commission is whether the Appellant suffered from MVA related injuries which prevented him from working as a scrap metal collector between November 19, 2014 and July 31, 2015, and whether he is entitled to further physiotherapy benefits for his injuries.

For the reasons set out below, the panel finds that the Appellant should be entitled to IRI benefits in connection with his MVA related injuries until January 11, 2015. However, the panel finds that the Appellant has failed to show that he is entitled to further physiotherapy benefits.

Documentary Evidence:

The Appellant relied upon reports from [text deleted] (general practitioner), [text deleted] (sports medicine physician), and physiotherapy reports, as well as reports from caregivers dealing with his other medical conditions, such as urologist [text deleted] (kidney stones) and [Appellant's gastroenterologist] ([inflammatory condition]). The Appellant also provided documentation from scrap metal businesses to establish his regular earnings from that endeavour.

[Appellant's general practitioner]

- [Appellant's general practitioner] provided an initial primary health care report dated December 11, 2014, indicating that the Appellant should not work due to injuries suffered in the MVA, with a medical diagnosis of cervical/left shoulder and lumbar strain.
- [Appellant's general practitioner] provided a narrative report dated December 29, 2014 describing his examinations of the Appellant and his advice on December 11, 2014 that the Appellant should not return to work for the next month and follow up with him in one month's time.
- No reports from [Appellant's general practitioner] for January or February of 2015 were provided to the Commission.

- A report dated March 6, 2015 indicated the Appellant was “able to return to work as of March 6, 15 [sic]”.
- A report dated May 4, 2015 described neck, shoulder and back pain since the MVA of November 19, 2014.
- A narrative report dated January 30, 2018, described the Appellant’s limitations caused by neck pain, headache, back pain, pain in his lower extremities and right hand. This report also noted findings of disc degenerative disease, but did not comment on the MVA itself.
- Clinic notes from [Appellant’s general practitioner] were also provided.

[Appellant’s sports medicine physician]

[Appellant’s sports medicine physician], provided a report dated July 7, 2015. He reviewed the Appellant’s WCB injury as well as his experience of chronic back problems since a remote MVA in 2009. He noted a bad rear end collision in November 2014 resulting in widespread pain to his neck, back and shoulder girdle. He described other car accidents, as well as the Appellant’s history of [inflammatory condition] and urolithiasis (kidney stones). [Appellant’s sports medicine physician] concluded:

“He has widespread mechanical and myofascial pain without evidence of radiculopathy post MVA’s. Unfortunately, I do not have much to add to his treatment regime. The focus should be on physiotherapy, posture correction and exercise maintenance. There is the option of tricyclics or other antidepressants if this pain becomes more chronic. I would stay away from long acting opioids and watch him carefully on his short acting opioids. The goal would be to try and get him off them. I have encouraged him to maintain his activity levels and it is okay for him to continue working as he presently is...”

Physiotherapy

- Physiotherapy reports from [Physiotherapy Centre] in 2015 documented the Appellant's diagnosis of cervical strain post MVA with right sided tightness in his neck and described his progress with continued improvement through physiotherapy treatments at that time.
- A later report from [Physiotherapy Centre #2], dated January 29, 2016, described symptoms of right shoulder and neck soreness with numbness and tingling into his right hand intermittently. A diagnosis of Thoracic Outlet Syndrome was provided with an indication that this resulted in an inability to perform the required tasks, as he had pain when sitting, so driving for long periods might be difficult and he might have difficulty lifting.

[Appellant's gastroenterologist]

Reports from [text deleted], a gastroenterologist, described the Appellant's issues with [inflammatory condition] and treatment for it.

[Appellant's urologist]

Reports from [text deleted], a urologist, described the Appellant's problems with kidney stones at various points and treatment for it. A report dated March 13, 2015 from [Appellant's urologist] provided a thorough description and analysis of his assessment of the Appellant on December 1, 2014.

[Appellant's urologist] indicated that he was asymptomatic from a kidney stone standpoint at that time, although he had grown some new kidney stones and was sent for investigation. The patient

had developed back pain and the patient reported being unsure as to whether his back pain was attributable to the kidney stones or the MVA. He noted that the pain did not radiate around to the lower abdomen and that the Appellant had not had hematuria or passed recent stones at that time.

[Appellant's urologist] concluded that the midline lower back pain which the Appellant described and the acute exacerbations of back pain with movements of his back and tenderness of the lower back on palpitation, caused [Appellant's urologist] to believe that this was not consistent with kidney stone pain.

Health Care Services

MPIC relied upon the Appellant's medical history and Health Care Services reports from its medical and physiotherapy consultants.

- The first Health Care Services medical consultant opinion was provided on April 27, 2015. After reviewing the Appellant's complaints and medical history (including documents obtained from WCB) the health care consultant indicated that the file did not contain sufficient medical evidence to address the issue of whether MVA related injuries prevented the Appellant from resuming his employment as a scrap metal collector requiring medical intervention and whether the period of time he was off work was reasonable in relation to MVA related injuries. To that end, the medical consultant requested a copy of [Appellant's general practitioner]'s clinic notes and information respecting the circumstances of the MVA and the amount of damage to the vehicles. While noting that there was no job description or job demands analysis on file, and that the Appellant's duties

varied from light to heavy with varying times/various days, the consultant did not request such information or request a physical demands analysis or functional capacity evaluation.

- A second opinion was provided following receipt of [Appellant's general practitioner]'s clinic notes and information regarding the circumstances of the accident and damage to the vehicles. In an opinion dated September 28, 2015, the consultant reviewed the available information indicating that the clinic notes did not provide much in the way of objective physical findings to support an occupational disability, but disclosed a number of other conditions, which could create various symptoms and translate into functional limitations. The report also noted that the Appellant was fit enough to engage in an assault for which he was incarcerated in 2015. [Appellant's sports medicine physician]'s report was reviewed, and it was noted he had encouraged the Appellant to remain active. Thus, it was concluded that the Appellant had not experienced anything more than a possible minor exacerbation of symptoms as a result of the MVA and that he had recovered from any medical conditions causally related to the incidents in question.
- A report from the Health Care Services physiotherapy consultant was provided on February 9, 2016. It noted that the report from the Appellant's physiotherapist was incomplete as it did not include the required two outcome measures score or reflect an injury category. In noting the diagnosis of cervical left shoulder muscular strain by [Appellant's general practitioner] and [Appellant's sports medicine physician]'s report of widespread mechanical and myofascial pain, the physiotherapy consultant queried why the diagnosis of Thoracic Outlet Syndrome by the Appellant's physiotherapist was related to the MVA and requested that the file be reviewed for causation of same.

- This was followed by a Health Care Services medical opinion dated April 4, 2016. After reviewing the deficiencies in specific clinical findings and manoeuvres suggestive of Thoracic Outlet Syndrome, the medical consultant noted that this condition could develop in connection with postural abnormalities, which the Appellant was noted to have, and concluded that it was not medically probable the postural abnormalities were casually related to the MVA.

Evidence of the Appellant:

The Appellant testified at the hearing into his appeal. He described what he could remember about his MVAs and acknowledged that he was on WCB partial disability at the time of the MVAs. He indicated that his job was driving with a partner, looking for scrap metal and picking it up. He indicated that sometimes he would help lift larger items into the truck. He said that lifting was fine for him. He just could not do anything repetitive because the restrictions from his wrist injury prevented him from doing repetitive work.

He indicated that he was working approximately eight hours a day, every day including on weekends. This amount of work was disputed upon cross-examination, where the Appellant admitted that this was just an average. He worked more on some days and less on others, and he had not actually been working eight hours a day for seven days a week.

However, he indicated that he earned approximately four to five hundred dollars a week in profits, from collecting scrap metal.

The Appellant tried to see his family doctor the day after the first MVA. He said that the doctor was away, so he booked an appointment with a physiotherapist and started physiotherapy with [Physiotherapy Centre] right away. MPIC covered this therapy for 18 appointments and then declined to provide any further treatment.

The Appellant was examined by [Appellant's general practitioner] shortly after the MVA, sometime during the next week. He said he was examined and prescribed Tylenol 3 for his pain.

The Appellant indicated that he still has problems working and has to watch his posture and be careful how he stands. He also has to be careful to move slowly so as not to trigger pain, particularly in his lower back. He testified that he had not worked much at all since the MVA so it was hard to tell exactly what he could or could not do.

On cross-examination, counsel for MPIC reviewed the Appellant's history of left wrist injury and complaints of severe back and abdominal pain resulting from a history of kidney stone attacks. The Appellant admitted that he did have kidney stone pain both before and after the MVA, but that this was a pain in his side flank, different from the pain in his neck and back which the MVA caused him. The Appellant indicated that the pain was different. While the kidney stone pain could be described as severe, it was more in his hip area on the left side and was different from his back pain. He indicated that before the MVAs, he had never had any problems with his back.

The Appellant was also asked about his diagnosis for [inflammatory condition] and medication, such as [text deleted] which he was prescribed for that. He was asked whether this medication made him too tired to work. The Appellant indicated that it may have made him tired after his first treatment, and agreed that he was taking that medication for approximately six months, around the time of the MVA. He described [Appellant's gastroenterologist] as his liver specialist who treated him for the [inflammatory condition] and [Appellant's urologist] as his kidney specialist. He admitted that his kidney stone pain did stop him from working occasionally over the years and that he received treatment for kidney stones, which resulted in him being off work for a week afterwards, on March 25 and on April 23, 2015.

The Appellant was asked about his involvement in altercations and assaults and whether this had caused him to be incarcerated. The Appellant indicated that he had spent 21 days in [correctional institute] for a breach of a peace bond as a result of an altercation but denied being in jail for six weeks in early 2015.

The Appellant was asked whether he recalled [Appellant's general practitioner] telling him that he had degenerative disc disease. The Appellant said that he recalled that, but did not understand what it meant.

Submission for the Appellant:

Counsel for the Appellant indicated that the Appellant was seeking IRI benefits from November 19, 2014 to July 31, 2015, as well as physiotherapy benefits.

She submitted that the Appellant meets the reviewed definition of being unable to work due to a MVA. She submitted that MPIC's position that it was his numerous other medical conditions which rendered him unable to work was incorrect.

While counsel recognized that the Appellant had been unable to work due to kidney stone problems for one week following March 25 and April 23, 2015, [Appellant's urologist] had confirmed that in December of 2014 he was asymptomatic from a kidney stone standpoint and that the acute pain that he had been experiencing at that time, in the midline and not around the abdomen, was not consistent with kidney stone pain. Accordingly, counsel submitted that this back pain was due to the MVA. The fact that other medical conditions may have been in the background does not take away from the fact that the MVA caused the Appellant neck and back pain. The Appellant testified that, as confirmed by the medical reports, when he does suffer from kidney stone pain it is acute and short term and would not result in the loss of work for eight months.

[Appellant's sports medicine physician] also recognized the Appellant's chronic pain issues and restricted work following his MVA.

In regard to physical altercations noted in the Appellant's records, counsel for the Appellant submitted that they did not have any bearings on these proceedings. We do not know much about what happened during these fights, but there is nothing to indicate that they prevented the Appellant from sustaining a long, eight hour work day.

Counsel also addressed some of the confusion in the evidence regarding how much the Appellant was working before and after the accident. The Appellant's estimation of eight hours a day was a guess, based on averaging, since he didn't really have a regular job where one punches a time

clock. He was just driving around with a partner looking for scrap metal and did not have a boss with a time sheet. The evidence established that he was earning approximately \$400 a week within his WCB restrictions. Prior to the MVAs he was able to do this work and he was not able to do it following the MVAs. Throughout his work history, he may have suffered occasionally from low energy levels but, as the Appellant indicated, he could still function. The same was true overall for his kidney problems and the [inflammatory condition], which did not cause pain, only occasional tiredness.

Counsel submitted that it was clear that the MVA had caused the Appellant's problems. He was in a serious MVA followed up by a few more in a short period, which further exacerbated his pain situation. The ongoing complications and pain which he suffers, to this day, show that his pain was long lasting. Counsel urged the panel to overturn the IRD denying IRI and PIPP benefits and to provide the Appellant with compensation.

In her reply to MPIC's submission, counsel emphasized that the Appellant had sought treatment from [Appellant's general practitioner] very soon after the MVA; almost right away. The Appellant had a physically demanding job driving and helping to lift scrap metal and [Appellant's general practitioner], who had assessed the Appellant's injuries, recommended he take time off work as a result. He knew more about the Appellant and his job duties than [MPIC's medical consultant] knew, and his opinion should be given appropriate weight.

Submission for MPIC:

Counsel for MPIC submitted that the Appellant had not met the onus upon him of proving that he was entitled to further PIPP benefits, either for IRI or for physiotherapy. In support of this submission, counsel relied upon the limited injuries which the Appellant suffered in the MVA.

These were minor injuries which did not prevent him from working as a driver in the scrap metal industry. Counsel also relied upon the pre-existing medical conditions from which the Appellant suffered, as well as issues with his credibility and reliability.

In examining the medical information regarding the Appellant's ability to work, counsel noted that there was very little evidence for the period following the first MVA in November of 2014. He indicated that there was no emergency report and no report from a doctor's office visit until 22 days after the MVA. Although the Appellant indicated that he went to see the doctor the following day, there is no record of this in [Appellant's general practitioner]'s chart notes. It was submitted that the Appellant did not see [Appellant's general practitioner] until December 11, when he was diagnosed with cervical and left shoulder muscular strain. At this time he had almost normal range of motion in his neck and shoulders. It was submitted that his low back pain had resolved and that he then suffered from flank pain centering around his kidney stones, as was evident from an emergency treatment record from the [hospital] dated December 22, 2014.

This was consistent with evidence of the Appellant suffering from acute intermittent flare-ups of his kidney stones.

Reports from [Appellant's gastroenterologist] indicated that the Appellant also suffered from [inflammatory condition] and was undergoing treatment for that, with the attending side effects.

When asked about [Appellant's general practitioner]'s report of December 29, 2014 which indicated the Appellant was advised not to return to work for the month following December 11, 2014, counsel indicated that this report did not state that the Appellant had been involved in a serious incident. It did not say why he was advised not to return to work. When asked about

[Appellant's general practitioner]'s indication to this effect in the primary health care report following the examination of December 11, 2014, counsel indicated that that this MPIC form completed by the doctor provided very little information.

Looking at the months of March and April 2015, counsel reviewed [MPIC's medical consultant]'s report, which considered the diagnosis of a strained neck and concluded that this would not equate to an injury which would prevent someone from doing a job. Still [MPIC's medical consultant] had requested further information to help assess what injuries might have arisen from the MVA.

Counsel looked at [Appellant's sports medicine physician]'s report of July 2015, which described the Appellant's pain and minor range of motion restrictions and concluded that he needed physiotherapy, exercises and posture correction. The report stated the Appellant should be encouraged to maintain his activity levels and that it was okay for him to continue working as he presently was. This, it was submitted, reflected upon the credibility of the Appellant who took the position towards the end of his cross-examination, that he had not been working until after July 2015. Counsel also noted that earlier in his cross-examination, the Appellant had admitted to working at some points in March, April and July 2015.

Counsel submitted that [Appellant's general practitioner]'s opinion that the Appellant should be off work until sometime into January 2015 was not a strong opinion and probably should not be relied upon. Counsel for the Appellant did not believe that [Appellant's general practitioner] understood what the Appellant's job was. It was only a part time job collecting scrap metal and involved mostly driving. [Appellant's general practitioner] had also indicated that he was not aware of any pre-existing conditions that would contribute to the Appellant's current condition in December of 2014. Counsel submitted that [Appellant's general practitioner] has missed the

Appellant's WCB injury. He had also missed incidents of severe abdominal pain and kidney stones resulting in serious pain, low energy resulting from his [inflammatory condition] treatment, and incidents of assault and incarceration.

The final report from [Appellant's general practitioner] in January of 2018 recognized that the Appellant also suffered from degenerative disc disease.

Therefore, counsel argued that the evidence on file does not meet the onus on the Appellant to establish further entitlement to PIPP benefits.

Finally, counsel submitted that very little weight should be placed on the Appellant's testimony. He was, for example, evasive in his response regarding the number of hours that he had worked. He denied instances of prior pain or pain reports to [Appellant's general practitioner], when the records showed otherwise. His evidence was inconsistent regarding the time spent incarcerated and regarding whether he worked in March, April and July of 2015.

Therefore, counsel submitted that if the panel has any questions which would rely upon the Appellant's evidence, the inconsistencies, evasiveness and limited credibility of his testimony should lead the panel to conclude that the evidentiary onus on the Appellant had not been met.

Discussion:

The relevant provisions of the MPIC Act are as follows:

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

83(1) A temporary earner or part-time earner is entitled to an income replacement indemnity for any time, during the first 180 days after an accident, that the following occurs as a result of the accident:

- (a) he or she is unable to continue the employment or to hold an employment that he or she would have held during that period if the accident had not occurred;
- (b) he or she is deprived of a benefit under the *Employment Insurance Act* (Canada) to which he or she was entitled at the time of the accident.

Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

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;
- (b) the purchase of prostheses or orthopedic devices;
- (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
- (d) such other expenses as may be prescribed by regulation.

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, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant;
- (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 he should be entitled to

IRI and further PIPP benefits as a result of injuries sustained in the MVA of November 19, 2014 (and subsequent accidents). The panel has reviewed the documentary evidence on the Appellant's indexed file, as well as the testimony of the Appellant at the hearing. The panel finds the Appellant has met the onus upon him of showing that he is entitled to IRI benefits until January 11, 2015.

We have reviewed the initial primary health care report provided by [Appellant's general practitioner] on December 11, 2014. This report provided a diagnosis of cervical/left shoulder lumbar strain and confirmed that the patient's condition resulted in an inability to perform any required tasks, with a return to the workplace adversely affecting the natural history of the condition. A targeted return to work date was listed as "unknown", and a referral to physiotherapy noted.

This was followed by a narrative report from [Appellant's general practitioner] dated December 29, 2014 indicating that he saw the Appellant on November 24, 2014 (primarily for other reasons) when he mentioned that he had pain due to a MVA. He noted that the patient was receiving physiotherapy.

[Appellant's general practitioner] then attended to the Appellant in regard to his MVA associated complaints on December 11, 2014 and provided a report dated December 29, 2014. He noted the Appellant's complaints of neck and left shoulder pain since the MVA as well as paresthesias in his left arm starting 2-3 days after the accident. An examination showed diffuse muscular tenderness of paracervical muscles and left shoulder girdle with more intense tenderness over the left upper trapezius. Range of motion was largely normal.

[Appellant's general practitioner] concluded:

“The patient was advised to continue with physiotherapy. He was diagnosed with a cervical and left shoulder muscular strain.

As he had a physically demanding job (picking up scrap metal), I advised him not to return to work for the next month. I told him to follow up with me in a month's time.

I am not aware of any pre-existing condition that would contribute to [the Appellant's] current condition. I believe that he will not have any permanent impairment as a result of this MVA.”

The panel has relied upon [Appellant's general practitioner]'s reports as medical evidence from the Appellant's family doctor (who was familiar with his medical history, saw him shortly after the MVA accident and assessed him on December 11, 2014) recommending that he take one month off from work.

Counsel for MPIC suggested that all of the Appellant's pain complaints were due not to the MVA, but rather to his problems with kidney stones. MPIC pointed, for example to a Health Sciences Centre emergency treatment record of November 14, 2014 where the Appellant presented with right flank pain and abdominal pain tenderness.

The panel finds that this theory was disputed by a report from the Appellant's urologist, [test deleted]. In a report dated March 13, 2015, [Appellant's urologist] described an examination of the Appellant on December 1, 2014, (around the same time period [Appellant's general practitioner] addressed in his early reports). [Appellant's urologist] stated:

“The above patient was seen today in follow-up regarding his history of urolithiasis. He was last seen on December 1, 2014. At that time, he was asymptomatic from a kidney stone standpoint. He had grown some new kidney

stones and was sent for a serum and urine biochemical work up. Since that time, he has developed back pain. The patient reports having two car accidents and is unsure whether his back pain has attributed to his kidney stones or his motor vehicle accident. I understand that he has been seeing a physiotherapist and a chiropractor who does not think that the pain is necessarily related to his car accidents. The patient describes a midline lower back pain. He has acute exacerbations of the pain with movement of his back and is tender over the lower back on palpation. I do not think that this would be consistent with kidney stone pain. The pain does not radiate around to the lower abdomen. He has not had hematuria and has not passed recent stones...”

The symptoms noted by [Appellant’s general practitioner] resulted in a diagnosis of cervical and left shoulder muscular strain and [Appellant’s urologist] confirmed that the midline back pain described, along with the exacerbation of pain with movement and tenderness in the back, were not consistent with kidney stone pain.

Therefore, the panel concludes that the evidence does not show that there were other reasons, which would account for the Appellant’s inability to work between the MVA and January 11, 2015, aside from the diagnosis of soft tissue injuries sustained in the MVA. Accordingly, the panel finds that the weight of the evidence confirmed that the Appellant was unable to work as a result of the MVA related injuries until January 11, 2015.

The panel also finds however, that the Appellant has not met the onus upon him showing that he was unable to work due to MVA accident injuries after January 11, 2015.

The Appellant is claiming IRI benefits until July 31, 2015.

However, a review of the evidence shows that no medical reports have been provided to the Commission for the period of late January or February 2015, to indicate that the Appellant could

not work due to accident related injuries. The next medical report from [Appellant's general practitioner] on the Appellant's indexed file was dated March 6, 2015.

It stated:

“[the Appellant] is able to return to work as of Mar 6, 15 [sic] ”

This note provides no information regarding ability or inability to work for the period between January 11, 2015 and March 6, 2015. It does not state that he could not work prior to March 6 and makes no mention of the MVA.

Further medical reports provided in regard to the time period between March and April 2015, along with the testimony of the Appellant, confirmed that the Appellant received treatment for kidney stones on March 16, 2015 and April 24, 2015 and that he was unable to work for a one week period following each of these treatments. The Appellant's evidence as to whether or not he was working at other points in March and April of 2015 was contradictory. During cross-examination he stated that he was otherwise working during that time, but later indicated that he did not work until after July 31, 2015.

In addition to his kidney stone treatment, the Appellant admitted to a period of incarceration in the spring of 2015, which would also have contributed to his inability to work.

A final report from [Appellant's general practitioner] dated January 30, 2018 described the Appellant's struggles with neck pain, headache, back pain, pain in his lower extremities and some right hand pain, as well as some assessment of his abilities. That report also mentioned x-rays positive for degenerative disc disease, but made no mention of the Appellant's ability to work, or any connection between these ongoing complaints and the MVA.

Therefore, faced with evidence of other factors preventing the Appellant from working in March and April of 2015, and a lack of specific evidence from the Appellant's caregivers regarding the effects of the MVA between February and July, the panel finds that there is insufficient medical evidence of the Appellant's inability to work due to MVA related injuries after January 11, 2015. Accordingly, the panel finds that the Appellant has failed to meet the onus of showing entitlement to IRI benefits after January 11, 2015.

In addition, the panel finds that the Appellant has failed to show that he is entitled to further PIPP benefits as a result of the MVA. He received a course of physiotherapy treatment benefits provided by MPIC following the MVA and extending into 2015. However, the Appellant has failed to provide medical evidence which would substantiate ongoing injuries caused by the MVA which would entitle him to further PIPP benefits for additional physiotherapy treatment.

As a result, the Appellant's appeal is allowed, in part. The panel finds that he is entitled to IRI benefits up until January 11, 2015, but is not entitled to IRI benefits beyond that date, or to further PIPP benefits. The Internal Review Decision of February 2, 2016 is amended accordingly.

The calculation of IRI benefits from the MVA to January 11, 2015, in accordance with the provisions of the MPIC Act and Regulations, is hereby referred back to the Appellant's case manager for calculation.

Dated at Winnipeg this 16th day of October, 2018.

LAURA DIAMOND

JANET FROHLICH

ARNOLD KAPITZ