Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-16-077

PANEL:	**Ms Jacqueline Freedman, Chair** **Mr. Guy Joubert** **Ms Sandra Oakley**
APPEARANCES:	**The Appellant, [text deleted], was represented by Mr. Gene Zazelenchuk;** **Manitoba Public Insurance Corporation ("MPIC") was represented by Mr. Matthew Maslanka.**
HEARING DATES:	**February 20, 21, 27 and 28, March 1, April 9 and 10, and September 12 and 13, 2018.**
ISSUE(S):	**Whether the Appellant's Income Replacement Indemnity ("IRI") and Personal Care Assistance ("PCA") benefits were properly terminated.** **If so, whether the Appellant is required to reimburse MPIC for the amount of any IRI and PCA benefits she received to which she was not entitled.**
RELEVANT SECTIONS:	**Paragraphs 160(a) and (g) and subsection 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

Background:

[Text deleted] (the "Appellant") was involved in a motor vehicle accident (the "MVA") on March 11, 2010. She injured her neck, back and hip and suffered post-concussions symptoms, as well as

temporomandibular joint dysfunction. She sought medical treatment and she received benefits under the Personal Injury Protection Plan ("PIPP") provisions of the MPIC Act.

Subsequent to the MVA, the Appellant was unable to return to work. MPIC arranged for a rehabilitation program and also asked the Appellant to complete Daily Activity Log ("DAL") forms. In addition, MPIC conducted surveillance of the Appellant outside a clinical setting.

The Appellant did not attend all of the scheduled sessions of the rehabilitation program. She advised MPIC that her non-attendance was as a result of advice from her physicians. MPIC did not accept that this was the case. MPIC further determined that the Appellant's activities as indicated on the surveillance were inconsistent with what she had indicated in her DAL forms. As a result, MPIC's case manager issued a decision dated December 28, 2011, which stated as follows:

> … this will confirm the termination of your entitlement to Personal Injury Protection Plan (PIPP) benefits for knowingly providing Manitoba Public Insurance (MPI) with false or inaccurate information with respect to the extent of your injuries and your functional abilities in contravention of section 160(a) of *The Manitoba Public Insurance Corporation Act* …
>
> In addition to the termination of your entitlement to benefits, you are responsible for reimbursing MPI for the excess payment of benefits you received as a result of your failure to notify and provide MPI and your caregivers with accurate information concerning your functional ability in accordance with section 189(1) of the *Act* …

The Appellant disagreed with the decision of the case manager and filed an Application for Review. The Internal Review Officer considered the decision of the case manager, as well as the applicable legislation, and issued an Internal Review decision dated June 9, 2016, which provides as follows:

> The decision under review terminated your PIPP benefits under the authority of section 160 of *The Manitoba Public Insurance Act* ("the Act") for providing false information and failing to participate in your rehabilitation program:
> …

> The false information arises, in part, from your attendance at [Rehabilitation Centre] for a Multi-Disciplinary Assessment of your functional abilities (January 12, 2011) as compared against your daily activities while under video surveillance.
>
> Your failure to participate arises from the re-conditioning recommended by [Rehabilitation Centre] beginning January 24, 2011. … For reasons now unknown, you did not begin the re-conditioning program as scheduled. You did eventually begin the program on March 7, 2011 but immediately stopped attending (March 10, 2011) for a rhizotomy procedure on March 14 (sic), 2011. You never returned to [Rehabilitation Centre] to complete the program, claiming that symptoms from the rhizotomy prevented further participation.
> …
>
> There does not seem to be any debate that the accident of March 11, 2010 caused injury to your body as set out above. The issues are whether you knowingly provided MPI with false or inaccurate information and whether you failed to follow or participate in the [Rehabilitation Centre] rehabilitation program (without valid reason). Based on what appears in the video surveillance, the writer is of the view that you repeatedly provided MPI with false information and did not, without valid reason, participate in the rehabilitation program.
> …
>
> Based on my review of your file, there is nothing to suggest that your Case Manager erred in ending your entitlement to PIPP benefits. There was also no error made in his demand for reimbursement of $23,322.19, his calculation of the amount from when you attended [Rehabilitation Centre] for the assessment (January 12, 2011) was the most logical date to use.
>
> Accordingly, I am upholding the Case Manager's decision in its entirety.

The Appellant disagreed with the decision of the Internal Review Officer and filed this appeal with the Commission.

Issues:

The issues which require determination on this appeal are as follows:

1. Did the Appellant knowingly provide false or inaccurate information to MPIC, within the meaning of paragraph 160(a) of the MPIC Act?

2. Did the Appellant fail to follow or participate in a rehabilitation program made available by MPIC, without valid reason, within the meaning of paragraph 160(g) of the MPIC Act?

3. If the answer to either question #1 or #2 is yes, then were the Appellant's PIPP benefits properly terminated within the meaning of section 160 of the MPIC Act?

4. Depending on the answer to question #3 above, did the Appellant receive any PIPP benefits to which she was not entitled, which she must now reimburse to MPIC pursuant to subsection 189(1) of the MPIC Act?

Decision:

For the reasons set out below, the panel finds as follows:

1. The Appellant did knowingly provide false or inaccurate information to MPIC, within the meaning of paragraph 160(a) of the MPIC Act.

2. The Appellant did fail to participate in the rehabilitation program made available by MPIC, without a valid reason, within the meaning of paragraph 160(g) of the MPIC Act.

3. The Appellant's IRI and PCA benefits were properly terminated within the meaning of section 160 of the MPIC Act. The effective date of this termination should be March 28, 2011.

4. The Appellant did receive IRI and PCA benefits to which she was not entitled, starting on March 28, 2011 and ending on the date of the case manager's decision, December 28, 2011. The amount of these benefits must now be reimbursed to MPIC pursuant to subsection 189(1) of the MPIC Act.

Preliminary and Procedural Matters:

In his Internal Review decision, the Internal Review Officer referred to the fact that the events leading up to the termination of the Appellant's PIPP benefits were the focus of a criminal fraud trial which was presided over by Justice Rempel. The Internal Review Officer relied on certain comments made by Justice Rempel in his decision, and that decision is one of the documents in the indexed file which forms the documentary evidence in this matter.

At the outset of the hearing, panel member [text deleted] identified to the parties that Justice Rempel is a law school classmate and casual friend of [text deleted]. [Text deleted] disclosed that, together with other classmates, [text deleted] had been out for meals with Justice Rempel and had also once been a referee for a job for him. [Text deleted] stated that [text deleted] felt comfortable

that [text deleted] could sit as a panel member and discharge [text deleted] duties in this matter without bias; however, [text deleted] did want to disclose the foregoing and give the parties an opportunity to express any concerns they might have. Counsel for both parties indicated that they had no concerns with [text deleted] continuing to sit as a panel member in this matter.

Also at the outset of the hearing, we had a discussion regarding the video evidence in this matter. As noted above, MPIC conducted video surveillance of the Appellant. There are 14 DVD surveillance videos. Counsel for MPIC indicated that he would like the panel to view the DVDs in their entirety. Counsel for the Appellant concurred. The panel subsequently determined, after the testimony of the first witness ([Appellant's dentist]), that we would like to view the DVDs in their entirety prior to the testimony of the balance of the witnesses. Accordingly, the hearing was adjourned for a few days in order to allow for this to be done. This resulted in some delay in rescheduling the balance of the witnesses.

Opening Statements:

After concluding discussions of the preliminary matters, the panel briefly discussed with counsel for the parties the issues under appeal, and in particular the applicable legislative provisions. The parties were then invited to give opening statements. Counsel for the Appellant did not make an opening statement. Counsel for MPIC made an opening statement, which will not be summarized here, as its content was reflected in the submission of MPIC, below.

Evidence for the Appellant:

The Appellant testified at the hearing into her appeal. As well, she called as an additional witness [Appellant's dentist]. Prior to the appeal hearing, counsel for Appellant requested to have [Appellant's dentist] testify prior to the Appellant, and noted his intent that the Appellant would

absent herself from the hearing room during the testimony. Counsel for MPIC took no position on this issue. Although this is not the usual protocol during hearings at the Commission, the panel did permit [Appellant's dentist] to testify before the Appellant, and the Appellant was excluded from the hearing room during [Appellant's dentist]'s testimony.

Evidence of [Appellant's dentist]:

[Appellant's dentist] testified regarding his education and experience. He was qualified as an expert in temporomandibular dysfunction ("TMD").

He said that the Appellant had a misaligned jaw. He referred to his report dated August 28, 2015, which discussed craniomandibular disorders ("CMD"). [Appellant's dentist] testified that TMD is a subset of CMD; TMD refers specifically to the joint while CMD, or a misaligned jaw, affects the whole body. He explained that CMD can be caused by trauma, and the patient's accommodation to the misaligned jaw sets off a chain of symptoms. These include the inability to sleep, anxiety and depression, and then reactions of the muscle system including clenching and grinding, problems with balance including vertigo, and postural problems with a cascading effect. He described mandibular whiplash, being a traumatic impact to the lower jaw during an MVA from the acceleration/deceleration involved in an accident. He said that this would only appear on an x-ray if it was severe and there were broken bones.

[Appellant's dentist] also referred to an earlier report that he provided for the Appellant, dated July 15, 2010. In that report, he noted that the Appellant suffered from multiple symptoms. He testified that he wanted to do an objective assessment or measurement of the Appellant's jaw dysfunction through electro-diagnosis, in order to make an orthotic appliance, to reduce the hypertonicity of her jaw muscle. MPIC approved a flat plane splint for the Appellant, but not the electro-diagnosis.

He therefore declined to treat her, because he did not consider it to be in the Appellant's best interest to have a flat plane splint. The Appellant later came to him privately, in 2012, to proceed with the electro-diagnosis and subsequent treatment at her own cost. In his view, she has had success from his treatment. Although she will continue to have some pain, he understands that she is taking less medication than prior to receiving the splints that he prepared for her.

On cross-examination, [Appellant's dentist] confirmed that mandibular whiplash does not require direct trauma to the mandible, or jaw. Counsel for MPIC noted that images of the Appellant's temporomandibular joint had identified degenerative joint disease ("DJD"). [Appellant's dentist] said that DJD could develop due to trauma or could develop over time.

When counsel for MPIC suggested to [Appellant's dentist] that it is rare that TMD pain radiates past the C3 level of the spine, [Appellant's dentist] said that he disagreed totally with this proposition. [Appellant's dentist] said that myofascial pain can be divided into four categories: (1) primary jaw with no neck issues, (2) primary neck with no jaw issues, (3) primary neck with secondary jaw issues, and (4) primary jaw with secondary neck issues. The Appellant fell into category 3, primary neck with secondary jaw issues. He further said that neural anatomy is from head to toe. If someone reported pain other than in the head and neck, he would refer them elsewhere because it would be outside his expertise. However, in the Appellant's case, based on the imaging, it was his conclusion that her pain was caused by her neck and jaw.

Counsel for MPIC questioned [Appellant's dentist] regarding the splint that he prepared for the Appellant, and how it differed from the splint prepared for her by [Appellant's prosthodontist]. [Appellant's dentist] said that [Appellant's prosthodontist]'s splint was a flat plane splint, which he does not use. The splint that he provided is prepared using electro-diagnosis. This technology

is not used by anyone else in the province, but it is technology approved by the Canadian Dental Association. When asked by counsel for MPIC whether he would defer to the expertise of [text deleted], a prosthodontist, [Appellant's dentist] said that he would not. He said that he works with a prosthodontist and is familiar with what they do, but that he sees how they differ from him in terms of muscle physiology. Counsel for MPIC asked [Appellant's dentist] if he would defer in the Appellant's treatment to [text deleted], a physiatrist. [Appellant's dentist] said that if the Appellant's problem had been primary neck with no jaw issues, he would then defer to [MPIC's physiatrist], and let him treat her neck and back in conjunction with her wearing a dental appliance. However, her problem was primary neck with secondary jaw issues, and therefore he would not defer to [MPIC's physiatrist] in those circumstances.

MPIC's dental consultant provided a report discussing [Appellant's dentist]'s electro-diagnostic testing. Counsel referred to this report and asked [Appellant's dentist] if he agreed that this testing is not reliable. [Appellant's dentist] said he is aware that this opinion exists, but he does not agree. He is of the view that electro-diagnosis is the best way to diagnose the nature of the patient's problem. It provides objective information to determine a treatment plan for the patient. The electro-diagnosis is computerized, and measures muscle tension and blood flow. It is objective, although there is a factor of tolerance to pain, and people suffering from chronic pain may have more problems because of changes in their brain chemistry. [Appellant's dentist] said that the splint that he has provided to the Appellant, and subsequent splints to replace the first one, are superior to the flat plane splint that she was initially provided by [Appellant's prosthodontist]. She wears this splint 24/7, and only takes it out to brush her teeth.

Evidence of the Appellant:

Direct Examination:

The Appellant testified regarding her family background and her education. She had a previous car accident in 1987, which was serious. She had some subsequent issues with her neck and back and in 1991 she had surgery to remove her coccyx, which had been broken in the accident. In 1994 she got married. She and her husband had two boys, and her husband adopted her eldest son (from a prior relationship).

She described her life at the time of the 2010 MVA. She was employed with [text deleted], driving a handivan and also performing office duties. In addition, she operated her own business, training and showing German Shepherd dogs. She described her life before the MVA as very active. She participated in different sports and was highly involved with her sons and in [text deleted]. She assisted her sons with their conditioning and in addition she curled with her eldest son. She ran training classes for the German Shepherd dogs, doing obedience training three days a week and participating on the weekends in dog shows, at least one or two a month. The Appellant described herself as being in great health prior to the MVA. She said she visited a chiropractor for maintenance on average once or twice a month. She did not suffer from migraines. She took Tylenol #3 ("T3") medication occasionally, and in addition occasionally non-prescription Tylenol or Advil.

The Appellant described the MVA, and said that after the MVA she spent eight hours in the hospital before going home. She was on medication after the MVA and wasn't functioning well. After the MVA she saw her chiropractor regularly. She suffered from severe headaches, decreased range of motion in her right shoulder, changes in sensation in her fingers and in the toes of her left foot, as well as pain in her neck, left knee and left hip. Over time, she began to feel her jaw locking

up and she had a hard time chewing. She saw a dentist and then in July, 2010, she saw [Appellant's dentist] for the first time.

The Appellant discussed the activities captured on the video surveillance conducted by MPIC. She discussed how, when driving, she has a heated seat in her car that gives her great comfort. She also said that when she goes to watch her sons at their hockey games, she takes with her a gel seat that she heats in the microwave before going to the game. When discussing scenes of her being out in the community, she said that it is "exhausting sitting around all day at home when you are used to being productive". She testified that she would take her pain medication and go out for a couple of hours, to try and do what she could. She said that it was difficult to do these things after the MVA, but somebody had to do it and she wanted to feel that she was being somewhat productive in her household. After being out for a couple of hours, she would come home and "absolutely crash".

She described one particular scene in a video at the dog show on August 11, 2011, where she is seen drinking from a large coffee cup. She acknowledged that there was rye and Coke in the cup rather than coffee. She said that she does not have a drinking problem, but on that day she used the rye and Coke to help her get through the day. The dog show was a very special event of the [text deleted]. She is the president of the club. In that year, she only went to that one dog show, and she did not help to organize the event as she normally would have. As well, normally she would have been bathing, grooming and exercising the dogs, getting them ready to perform and taking them in the ring and showing them. She did none of those things at the dog show in August, 2011.

The Appellant testified regarding her meetings with MPIC's occupational therapist, [text deleted]. She said that she was truthful in each of her meetings with [MPIC's occupational therapist] and did not mislead her or misinform her in any way as to what she could or couldn't do. She also testified regarding the DAL forms that she completed and submitted to MPIC. She said that she was asked to complete these by her case manager, as a daily log of her activities. She testified that she did fill them in, but not every day, because doing it day in and day out "becomes depressive". She said that it was hard for her to put in writing what she could and could not do; typically, she would complete them at the end of a week, from memory, knowing that she had to submit them.

She described the rhizotomy procedure performed by [Appellant's anesthesiologist] in March 2011. She said that she was awake for the procedure and needles were inserted between her vertebrae. The intent is to burn the nerves to decrease the pain sensation from travelling to the brain at the same level of intensity. She described it as "excruciating", but said she was willing to try anything that might help. She said she did have a slight reaction to the dye injection, which caused some inflammation for about a week. She did not find that the rhizotomy helped. Acupuncture and chiropractic treatment provided temporary relief, and she did experience some relief from medication, but only for short periods of time.

The Appellant discussed her attendance at [Rehabilitation Centre] ("[text deleted]") on January 12, 2011. She testified that she may have taken an anti-inflammatory drug, but she did not take any T3 medication that morning. She said she was told not to take any medication before her attendance at the [Rehabilitation Centre] assessment. She discussed the rehabilitation program prescribed for her by [Rehabilitation Centre]. She said she tried talking many times to the therapists and to [MPIC's physiatrist]. She felt that most of the exercises were too difficult for her and were causing her distress. She was doing the best that she could, but they wouldn't listen to her.

She described the splint appliance prepared for her by [Appellant's prosthodontist]. She said that it was not beneficial to her. The Appellant eventually went to see [Appellant's dentist] privately, in 2012, after MPIC had terminated her benefits. He prepared a different splint for her, a lower jaw appliance (the one prepared by [Appellant's prosthodontist] was an upper jaw splint). She said that she noticed results from [Appellant's dentist]'s splint. She had a lot less headaches, and was able to eat normal foods. She had previously been on a restricted diet and was unable to eat crunchy food for approximately eight months after the MVA. By April, 2015, she was taking between 3-4 T3 daily, as compared to up to 6 per day in January, 2011, when she saw [MPIC's physiatrist]. The Appellant said that her T3 use was down almost by half from 2012, when she first saw [Appellant's dentist]. She believes that the splint made by [Appellant's dentist], and subsequent replacements, have had a huge effect and have helped tremendously.

The Appellant testified that subsequent to the MVA, she did not return to her pre-MVA employment. In approximately August, 2016, she began to work on a part-time basis for her eldest son's company. He owns three [text deleted] franchises and she works for him approximately 20 to 25 hours per week, going between the three stores and dealing with all the deposits and banking needs.

Regarding her current treatment needs, the Appellant testified that she still sees her chiropractor twice a week, for adjustments to her neck, right shoulder, wrist and left ankle. She gets acupuncture treatment once every two months. She is still taking T3s (on average three per day). She still sees [Appellant's dentist] regarding treatment of her jaw.

Cross-Examination:

On cross-examination, counsel for MPIC questioned the Appellant regarding her testimony that she was in "great health" prior to the MVA. He pointed out that she had been diagnosed with fibromyalgia as a result of the 1987 MVA, as well as with chronic neck pain. She acknowledged that that was the case, and that she had headaches prior to the 2010 MVA, although no migraines. She also agreed that she had experienced health problems which required ongoing care, and that she had seen [Appellant's anesthesiologist] prior to the 2010 MVA, at least once or twice. However, she said that she was still able to be active and productive, an active parent and in the workforce prior to the MVA.

Counsel reviewed with the Appellant the Application for Compensation, the Level of Function forms and the DAL forms. The Appellant said that she understood the purpose of those documents to be to document how things are going, so that MPIC would have a record of her improvement or lack of improvement, and that this would be important to MPIC because they were providing her with insurance benefits. Counsel then reviewed certain portions of the video surveillance with the Appellant and pointed out discrepancies to her between what she had written in the Level of Function forms or DAL forms as compared to what she is seen doing on the video.

As an example, counsel pointed out to the Appellant the Level of Function form from November 25, 2010, in which she stated she had various physical limitations, including the inability to raise her arm above shoulder level. In contrast, in the video from November 30, 2010, five days later, she is seen at a manual carwash. The Appellant agreed that she is making that motion in the video and also that there are other carwashes nearby, including an automatic carwash. She said that she wanted to go to the manual carwash because she felt the need to be productive.

Another example relates to the DAL forms completed by the Appellant for the week of December 7-13, 2010, in which her activities appear to be quite limited and in which she often comments regarding how much assistance she requires from family members. In contrast, on the video for December 14, 2010, she is seen out in the community from approximately 9:30 a.m. until 5:30 p.m., with a brief stop at home between 1:45 and 2:45 p.m. When questioned by counsel regarding this discrepancy, the Appellant said that December 14, 2010 was obviously a very good day for her. She said that when she has a good day she may tend to overdo things, and try to do as much as possible because she does not know when the next good day will come.

Counsel reviewed with the Appellant the multidisciplinary assessment that took place at [Rehabilitation Centre] on January 12, 2011. She said that she found the assessment hard; it was quite extensive. She agreed that [MPIC's physiatrist] had told her if she couldn't do an exercise, or any more repetitions, she should say so; she was told to just do it until she was comfortable and then stop. She did not take her medication for the day of the assessment but she did take medication when she went for the three days of rehabilitation treatment. When questioned by counsel regarding her activities seen on the video surveillance out in the community on January 12 subsequent to the [Rehabilitation Centre] assessment, the Appellant did not agree that she appeared to be like a normal person going about their everyday activities. She argued that she looked guarded and careful, moving differently than she had a year earlier.

Counsel also questioned the Appellant regarding her assertion that she would have to go home and "crash" after exerting herself, which she did not do after the [Rehabilitation Centre] assessment. She acknowledged that she did not go home immediately after the assessment. The Appellant said that taking her medication allowed her to function better, and that is why she appeared to be functioning well on the video surveillance. Counsel pointed out to her that she had advised

[MPIC's physiatrist] during the assessment that medication was not assisting her; the Appellant responded that in saying that, she had meant that medication does not take the pain away, but it does "take the edge off". Counsel questioned the Appellant regarding whether any healthcare provider supported her explanation that medication allowed her to function better for periods of time, or whether she had previously advised MPIC of this, prior to the termination of her benefits. The Appellant said she was sure she had told someone, but was unable to point to specific documentary evidence of this.

The Appellant was questioned by counsel regarding the rehabilitation program at [Rehabilitation Centre]. She said that she was not trying to avoid going to the program, she was just trying to avoid feeling worse than she already did. She said she attended for two weeks and was very compliant. She felt that it was very hard when they asked her to do more and when she said it was too hard, they asked her to try anyway.

Counsel questioned the Appellant regarding the DAL forms for March 7-29, 2011. In particular, he questioned her regarding her notes on the DAL form for March 29, in which she indicated that she was filling in the logs every couple of hours. The Appellant responded that she interpreted that note to mean if she did not fill in the DAL forms every couple of hours, then she had a hard time remembering what to fill in. It weighed on her mind in many ways, reminding her of what she could not do. Counsel reviewed the Appellant's listed activities in the DAL forms for March 28 and March 29, and then reviewed the video surveillance for those days with the Appellant. He pointed out to the Appellant that there were items listed on those DAL forms that did not appear on the video, and conversely many items on the video that were not listed on the DAL forms, and she agreed. When asked if it was fair to say that the information that the Appellant provided to MPIC in the DAL forms about her activities on March 28 and 29, 2011, was not accurate, the

Appellant said that would be a fair statement. The Appellant agreed that it would have been of interest to her case manager to be aware of the activities that she was doing on March 28 and 29, 2011. She said she didn't know specifically that her level of function played a role in her benefits, but she had been told by the occupational therapist that those assessments played a role.

The Appellant acknowledged that she was told by MPIC that filling out the DAL forms was important. She apologized for misunderstanding the instructions in filling out the forms and said she didn't always fill them out daily; if she filled them out at the end of the week, she obviously missed things. She could not stand staying in the house every day, thinking about what was happening to her. She said that if she made mistakes in judgment in not filling out the forms every hour, she obviously made that mistake. The Appellant did not agree that by leaving things out of the DAL forms when she was more active in the community, it made her seem less functional in the logs. She said she was still seeing her doctors and telling them and showing them how she felt and what she could do, and she was experiencing pain all the time. Her pain fluctuated and when it was less intense, she took advantage of every moment that she could function, by getting out and helping her family. Counsel asked the Appellant if she ever expressed the desire to MPIC to resume the rehabilitation program and she said no.

Counsel then questioned the Appellant regarding the video surveillance from August 10-14, 2011, in which she is seen setting up for and attending a dog show. The Appellant agreed that she was seen on the video, several times over the course of those days, crouching, squatting, bending, reaching, and even briefly jogging, without difficulty. She further agreed that she was more functional at that dog show than she had been at [Rehabilitation Centre], and more functional than she had reported to MPIC in the DAL forms that she filled out in March, 2011. She also agreed that she was more functional at the dog show than in the PCA assessments conducted by MPIC's

occupational therapist, although the Appellant said that she was completely honest with the occupational therapist in her home. She added that she was drinking alcohol at the dog show.

With respect to the PCA assessments done by the occupational therapist, the Appellant acknowledged that she understood that the purpose of the assessments was to gauge her functionality in order to determine the amount of her PCA benefits. When asked by counsel regarding the assessment for August 22, 2011, the Appellant said that assessment is an accurate assessment of her functionality for the date that it was taken, and is not reflective of her functionality for the entire month of August. When counsel pointed out to the Appellant that at the dog show, 10 days earlier, she had exhibited functionality in excess of what she reported to the occupational therapist, the Appellant responded that she would tell the occupational therapist that she had good and bad days, although she may not have exhibited the same functionality to her as she had at the dog show, which she acknowledged represented much more than an average day. The Appellant also agreed that if she could do fewer things, this would affect the amount that she got for PCA benefits.

Counsel pointed out to the Appellant that the condition that she had reported to MPIC wasn't an accurate reflection of her actual condition. He pointed to the video surveillance for March 28 and 29 showing the Appellant out in the community, as compared to an email that she sent to her case manager on March 29 indicating that she was "not doing well at all". The Appellant disagreed, saying that her condition could change from hour to hour, and day to day. She would take her medication and try hard to go out and be productive for her family, then she would come home and crash and then get up and try to go out again. She was not used to not being productive; she didn't want to sit at home and feel sorry for herself. Counsel asked the Appellant why she was not willing to return to the rehabilitation program. She responded that she felt that the program at

[Rehabilitation Centre] was detrimental to her because they pushed her too hard, even if she said it was too difficult. She felt that it was more than she could give. When asked if the reason she did not want to complete the rehabilitation program was because she did not want to return to work, the Appellant said she would have liked nothing better than to be able to return to work and not have to go through everything that she went through.

Evidence for MPIC:

MPIC called as witnesses [MPIC's physiatrist], and two of their Health Care Services ("HCS") consultants, [MPIC's medical consultant] and [MPIC's dental consultant].

Evidence of [MPIC's physiatrist]:

[MPIC's physiatrist] testified regarding his education and experience. He was qualified as an expert in physical medicine and rehabilitation, the evaluation of functional capacity and the treatment of chronic pain. He is the Medical Director at [Rehabilitation Centre], which has medical professionals of various disciplines on staff, but no dentists.

He testified regarding the multi-disciplinary assessment that the Appellant underwent on January 12, 2011. He said that he personally met with the Appellant, and took her history. He concluded that she was suffering from minor injuries, specifically pain to her neck and low back, with residual symptoms as well to her shoulder. She also mentioned pain in her jaw. He noted that she also had some pain prior to the MVA, as well as pre-existing fibromyalgia. [MPIC's physiatrist] went through the assessment report in detail, explaining the tests that were given to the Appellant. He noted that the Appellant exhibited some pain behaviours, specifically crying and extremely slow and stiff movements. He explained the impression that he had formed, which was that the Appellant had limited herself to some extent regarding the range of motion of her spinal movement

and her shoulder, but she did have some strengths and capabilities. Therefore, he recommended a rehabilitation treatment program for her. He said that the Appellant's prognosis was complex due to her chronic pain. She had some pain before the MVA, she still had pain at the time of the assessment, and would likely continue to have pain. However, she could get symptom reduction through the rehabilitation program. He would expect that her physical function could be improved through the program.

[MPIC's physiatrist] testified regarding the Appellant's participation in the rehabilitation program. There is an initial four week phase which is for reconditioning, to increase activity, and then a six week work hardening phase, which increases in hours and physicality, which, in the Appellant's case, would strengthen her shoulder and back and teach her to manage her condition on a long-term basis. He reviewed the Appellant's attendance at the program. In the first week, she was scheduled to attend on Monday, Wednesday and Friday. She did attend on Monday, which was for orientation. She then attended on Thursday. The following week, she attended again on Monday, and then on Wednesday she did not attend due to her rhizotomy procedure. She did not return to the program.

[MPIC's physiatrist] addressed the issue raised by the Appellant, being that she felt she was pushed too hard in the program. He said that at [Rehabilitation Centre], they do not push anybody to do anything. If the Appellant had difficulty with an exercise, they would modify or eliminate it. They give a prescription and suggest a quantity of repetitions or weight, which can be modified. In fact, some days the Appellant did fewer exercises than were suggested and some days she didn't do them at all. The program is designed to be flexible.

After the Appellant ceased participating in the rehabilitation program, [MPIC's physiatrist]'s next involvement with the file was when he was asked to review the video surveillance, which he did. He viewed all of the surveillance from November, 2010 through August, 2011, and compared his observations made of the Appellant's behaviour on the video to his observations made of her behaviour when she was at the [Rehabilitation Centre] clinic. He said that based on the videos, his impression was that the Appellant was quite active, moving around a lot, driving, shopping, and doing chores in the community. She seemed to be a normal, average person going about her business. In comparison, while she was in clinic, she was walking slowly, her movements were slow, and she had limitations in the movement of her neck and back. These limitations were not seen in the video. He did observe some moments where she exhibited a limp in the videos, but otherwise there were no pain behaviours or abnormality in the videos. The limp did not correspond to her presentation in the clinic, where she did not have a limp, and he was not aware of any condition that she had that would cause a limp. He said that the behaviour that he saw on the video was not that of a disabled person.

[MPIC's physiatrist] gave some specific examples of behaviour on the video that was contradictory to his impression of the Appellant in clinic. He noted that on the video, the Appellant reached across her vehicle with her right arm above her shoulder to brush the snow off it, whereas she couldn't do this movement in clinic. Similarly, when in the supermarket in the video, she raised a large jug of water from low down and placed it into her cart, and she also did this with a 24 case of pop; she was unable to lift similar weights in clinic. In clinic, she had exhibited limited neck range of motion and pain complaints; however, on the video she exhibited many neck movements, moving her neck quickly and easily, making shoulder checks while driving. He also noted that she was able to easily get into and out of her vehicle, balancing on one leg and lifting it into the vehicle. He said that this is a complicated movement which requires balance. In someone who is

complaining of back pain, it is often done without such ease and fluidity, by backing in, slowly and deliberately.

[MPIC's physiatrist] said that what he saw on the video fit with what he expected the Appellant to be able to do; the inconsistency was how the Appellant performed in the clinic. He said that it is possible that she would have had more pain during the multi-disciplinary assessment if she had not taken her pain medication, but her range of motion and her strength should not have been affected. He said there was nothing in the video that would indicate that she would be unable to participate in the [Rehabilitation Centre] rehabilitation program. He said that based on his assessment of her in clinic, in rehab and on the video, she is most likely at her pre-MVA condition, which includes a diagnosis of fibromyalgia, for which she was receiving treatment prior to the MVA. She does have chronic discomfort, but her function is unimpeded by that. He would expect her to have the ability to participate in the rehabilitation program and also to have the ability to return to work as a driver, which, as shown in the video, she is able to do.

When asked whether he agreed with [Appellant's dentist], that the Appellant's TMD could cause the pain in her shoulder, neck and back, [MPIC's physiatrist] said that he did not agree with that explanation. On cross-examination, it was pointed out that the Appellant's T3 consumption decreased after [Appellant's dentist] provided her with a splint. [MPIC's physiatrist] was asked whether it was probable that the Appellant's TMD was playing a bigger role in her condition than previously thought. He said that it was possible; he said there were also other possible explanations, such as the patient spontaneously getting better.

Evidence of [MPIC's medical consultant]:

[MPIC's medical consultant] testified regarding her education and experience. She was qualified as an expert in musculoskeletal and sport medicine with further expertise in forensic medical review. For eighteen years, she was a medical consultant for MPIC's HCS department. She described her involvement in this file, which was to review the video surveillance and all of the medical reports on the file, and provide an analysis as to whether the behaviour of the Appellant on the videos was consistent with how she presented to the health care providers and to MPIC. She described this type of analysis as a forensic medical review and said that she had done several thousand such reviews in the course of her 18 year career (6-10 per week x 50 weeks x 18 years).

She described her process in this case, which she said was the same as she followed in every case. She said she reviewed all of the medical documents first, looking at the Appellant's pre-existing conditions, medications, employment, injuries, how the Appellant responded to treatment, and how she was progressing, so she would have a picture in her mind of how she would expect the Appellant to be functioning if she were to walk into her clinic, prior to viewing the surveillance. [MPIC's medical consultant] noted that prior to the MVA, the Appellant did have pre-existing fibromyalgia, and was taking medication for pain relief. She noted that the Appellant's pain condition was stable prior to the MVA and she was working, taking care of her teenage children, and functioning in her household and community. Following the MVA, [MPIC's medical consultant] concluded that there was an exacerbation of the Appellant's pain condition, and that she suffered from whiplash and a sprain/strain to her low back. Prior to viewing the video, her impression of the Appellant was of an individual in a lot of pain, and she was expecting to see that on the video. She said that would be reflected as an individual who was guarded in movement, moving slowly, with facial expressions that were not happy, someone who was struggling, with

physical efforts that seemed cloaked in pain, walking slowly or stiffly, sitting down in a chair gingerly, with no free-flowing or easy-going movement.

[MPIC's medical consultant] said that when she watched the video surveillance, she was quite surprised. The videos showed a lot of activity, with a person not walking slowly or guarded in their movement. She referred to the Appellant's Level of Function form from November 2010, which reflected limitations in her movement and her assessment by [MPIC's physiatrist] from January 2011, which indicated a sore neck and limited movement, but noted that the Appellant did a fair amount of driving with neck movement. She noted that at the hockey game on November 30, 2010, the Appellant tracked the game back and forth with her neck, and her body language indicated that she was totally engaged with the game, having a good time, and this surprised [MPIC's medical consultant]. She said she didn't remember seeing any pain behaviours at all.

The Appellant had been involved with a lot of health care providers, who described someone who reports herself to be in pain, with limited function. [MPIC's medical consultant] said that's their impression, and they may believe that, but that is not at all what she was seeing on the surveillance video; based on the video it would not have occurred to her that the Appellant was in pain or had limited function. The logical scenario to her is that the Appellant was deliberately presenting herself differently to her providers. This is because there is too much surveillance to explain the discrepancy any other way. In particular, the surveillance of the Appellant's behaviour at the dog show in August, 2011, reflects a person standing up, stooping down, breaking out into a run, handling large dogs, being very engaged, having a really good time, which was very nice to see, but which was a shock given that the Appellant was doing a lot of things that supposedly she couldn't do. In [MPIC's medical consultant]'s opinion, the Appellant did not present herself to health care providers in the same manner as she presented herself on the surveillance video.

[MPIC's medical consultant] noted that the Appellant was telling her health care providers that she was disabled to a significant degree. She also said that she wasn't getting any relief from her medication or from any of the treatment that she was receiving. However, she appeared to be functioning quite well in the videos. In addition, she continued to seek out more treatment, such as shots from [Appellant's anesthesiologist], even though she said they weren't working and further that they were excruciating. [MPIC's medical consultant] concluded that the Appellant was misrepresenting the degree of her disability for her own gain. She said that it was possible that the treatments from [Appellant's anesthesiologist] were in fact working, but the Appellant didn't want to acknowledge this, because it would mean that she would lose her IRI and/or PCA benefits.

On cross-examination, [MPIC's medical consultant] acknowledged that the Appellant was feeling pain. She had a chronic pain condition prior to the MVA, and she had it after the MVA. The MVA could have affected it, but in [MPIC's medical consultant]'s view, based on the MVA injuries, the Appellant should have gotten back to her baseline of chronic pain and pre-MVA level of function, not to the escalation that she was reporting. When asked whether there was a missed diagnosis regarding the Appellant's jaw, [MPIC's medical consultant] pointed out that the Appellant did not mention jaw pain to the health care providers that she saw initially after the MVA. When a patient presents with certain symptoms, there has not been a missed diagnosis. In response to the proposition that the Appellant's T3 consumption has reduced, and therefore this must mean that the working diagnosis was not correct, [MPIC's medical consultant] responded that the Appellant may have demonstrated the placebo effect. She pointed out that having less jaw pain does not explain why the Appellant appeared engaged on the video.

Evidence of [MPIC's dental consultant]

[MPIC's dental consultant] testified regarding his education and experience. He was qualified as a dentist with expertise in TMD. He is a consultant with MPIC's HCS department.

He described TMD as being a collective term that involves musculoskeletal disorders where the jaw is located. He said that based on the information that was provided to him, the Appellant was diagnosed by several dental providers as having TMD, with a sub-diagnosis of myofascial pain. He described myofascial pain as being a muscle problem, whereas TMD is a joint problem. In the Appellant's case, the focus has always seemed to be on the over-activation of the muscles of her jaw. This has been treated by splint appliances, provided to her first by [Appellant's prosthodontist] and then by [Appellant's dentist]. [MPIC's dental consultant] said that he would agree with that course of treatment, although a multi-disciplinary approach would be appropriate, which he understands was the case here. This would involve treating the Appellant with medication as well as undertaking physiotherapy and other forms of physical treatment.

[MPIC's dental consultant] did not agree that pain in the whole body would be caused by TMD. He said that this is not in keeping with current concepts of TMD. Myofascial pain implies that the source of pain is localized, in this case to the jaw joint and chewing muscles. If she had been diagnosed with pain referral that would be something else, but in the Appellant's case that was not part of her diagnosis. If it had been, the pain referral would have been limited to in and around the neck area. He said it is not pathoanatomically likely that the jaw would refer pain down through the whole body to the foot; that would not be a referral pattern for TMD.

[MPIC's dental consultant] was questioned on cross-examination regarding the report dated March 1, 2016, that he provided, in which he stated that "Long term studies of TMD patient shows that 50% to more than 90% of patients have few or no symptoms after conservative treatment and stability is achieved in most cases between 6 and 12 months after the start of treatment". He said that the Appellant should fall within that range because she had no structural abnormality. He was further questioned regarding his statement in the report that the "consensus of care" held that the use of electro-diagnostic testing was not reliable. [MPIC's dental consultant] acknowledged that it was in fact MPIC's policy that he was relying upon as a basis for his statement regarding the consensus of care. He also pointed out that it was prior to his involvement with the file that the electro-diagnostic part of [Appellant's dentist]'s treatment plan had been denied by MPIC as being deemed not medically required. When asked about the Appellant's reduced T3 consumption, subsequent to the use of [Appellant's dentist]'s splint, [MPIC's dental consultant] said that sometimes just believing that something can help can result in the placebo effect. He also said that it could be that the design of the splint was different.

Submission for the Appellant:

Counsel for the Appellant noted that the common law system is very comfortable with giving adjudicators, including Commissioners of administrative tribunals, very broad discretion. He pointed out that under paragraph 184(1)(b) of the MPIC Act, the Commission has the discretion to "make any decision that the corporation could have made". He noted further that under section 160 of the MPIC Act, termination of the Appellant's PIPP benefits was not required, as that section says that MPIC "may refuse to pay compensation", but this is not mandatory.

It was counsel's submission that MPIC had erred in terminating the Appellant's PIPP benefits. More specifically, this error was caused by MPIC's refusal to consider [Appellant's dentist]'s

diagnostic expertise and treatment suggestions for the Appellant. He pointed to the evidence of [MPIC's dental consultant], who testified that when he referred, in his report, to the consensus of care regarding electro-diagnosis, he was in fact referring to MPIC policy. Counsel argued that it is reasonable for MPIC to take the position that the least expensive treatment should be the treatment attempted first. However, once that is proven not to be successful, it is not reasonable to say the other treatment, although more expensive, will never be attempted.

The Appellant suffered from constant pain, which counsel pointed out was acknowledged even by the MPIC consultant, [MPIC's medical consultant]. The Appellant was taking six T3 daily. Her treating physicians acknowledged the genuineness of her efforts to get better. [Appellant's anesthesiologist], a physician at the [text deleted], in his report dated March 25, 2010, noted that "She appears to be quite motivated and continues to perform daily range of movement exercises." [Appellant's psychologist], a Clinical Psychologist, in his report dated November 11, 2011, stated "There was no behavioral or test based evidence that [the Appellant] was not motivated or, not producing valid test results". The Appellant was not malingering; she wanted to get better, it was just not happening.

Counsel acknowledged that the Appellant, in filling out her DAL forms, was not accurate with respect to reporting her activities. He further acknowledged that the Appellant had admitted this in her evidence. Counsel noted that the Appellant filled out the DAL forms all at once, in order to get them over with. She felt that filling them out made things worse. He said that this is consistent with the advice that she received from [Appellant's psychologist], as found in his November 11, 2011 report, which states as follows:

> … I informed her that I was not in favor of her journalizing her physical symptomatologies as this focused her on her physical symptoms and more negative outcomes, and I wanted her focus to be on increasingly healthy activity.

With respect to the Appellant's attendance at [Rehabilitation Centre], counsel acknowledged that she didn't fully participate in the rehabilitation program. He said that the reason that she didn't attend was because she was in pain, and she was being told to try harder. She felt she was being pushed and she didn't think that the program would help her.

Counsel argued that what would have helped the Appellant was [Appellant's dentist]'s electro-diagnosis, which would have allowed him to make a proper splint, but this wasn't allowed by MPIC as a matter of policy. When [Appellant's dentist] first proposed this, it was declined; he therefore declined to treat the Appellant because he didn't want to do what he considered to be a substandard job. Counsel noted that the initial splint prepared by another practitioner did not work. Eventually, the Appellant approached [Appellant's dentist] on her own and has had successful treatment with him. Counsel noted that her painkiller consumption has been reduced and she is now able to work part-time. The Appellant attributes her reduced pain and ability to work to the splint appliance created by [Appellant's dentist].

Counsel submitted that the Appellant was misdiagnosed. It took a long time for there to be recognition that her pain was coming from her TMD. Less expensive, less sophisticated treatment was tried and did not work. The more expensive and more sophisticated treatment was refused, and the evidence is that it did work, because after receiving [Appellant's dentist]'s treatment, the Appellant has been able to reduce her medication consumption and work part-time.

Counsel argued that MPIC's refusal to consider the more sophisticated diagnosis and treatment led to additional pain for the Appellant. He submitted that the purpose of the PIPP legislation is to provide comfort and treatment to people who have suffered trauma. The Appellant suffered trauma

and continues to suffer from the effects of the MVA and the delay in getting the appropriate treatment. Therefore, the Commission should exercise its jurisdiction to reinstate the Appellant's PIPP benefits

The panel questioned counsel for the Appellant specifically regarding the application of the provisions of the MPIC Act in issue in this appeal, in particular paragraphs 160(a) and 160(g) of the MPIC Act. He said it is the Appellant's position that she did knowingly provide false information to MPIC, and that she did fail to participate in a rehabilitation program. The Appellant's reason for not attending [Rehabilitation Centre] was that she thought it wouldn't help her; counsel noted that it is up to the panel to determine whether that is a valid reason. He reiterated that it is the Appellant's position that her benefits should be reinstated.

The panel questioned counsel with respect to whether the Appellant wished to put forward an alternative position, such as suspension of PIPP benefits, but counsel chose not to do so.

Submission for MPIC:

Counsel for MPIC provided both written and oral argument. He reviewed the issues for consideration in this appeal, with reference to the relevant legislation. He noted that shortly after the MVA, the Appellant completed an Application for Compensation, in which she described her injuries and applied for PIPP benefits. The last page of that Application contains several declarations, which the Appellant acknowledged she reviewed prior to signing. These declarations provide that the Appellant understands and agrees to notify MPIC of any change in circumstances and to provide information and attend for treatment; failing to do so may result in a suspension or termination of her benefits.

The written submission of counsel for MPIC contains a summary of MPIC's position, as follows:

> MPIC relies upon the video surveillance conducted of the Appellant between the periods of November 2010 and August 14, 2011. Sixteen days of surveillance were conducted in six blocks over the course of nine months. The Appellant is captured on surveillance on every one of the days in which surveillance was attempted. The Commission has been provided with and has had the opportunity to view all the surveillance obtained of the Appellant by MPIC. When viewed in contrast with what the Appellant was reporting to her caregivers and MPIC, the surveillance is clearly at odds with what the Appellant was reporting her functional abilities and daily activities to be. MPIC requested that the Commission view the surveillance in its entirety as it is wholly consistent with a normal individual going about normal daily activities with no noticeable pain presentation for an extended period. MPIC submits that this evidence is significant and overwhelming and that false information was being provided during this entire period. This is not one instance of false information being reported, but a clearly visible attempt to mislead MPIC over the course of at least nine months for what can only be concluded to be an attempt to obtain PIPP benefits. This is supported by reviews of the surveillance and file documentation conducted by [MPIC's physiatrist] and [MPIC's medical consultant].

Counsel referred to the testimony of [MPIC's physiatrist] and [MPIC's medical consultant], who had both been qualified as experts, and who had both viewed the video surveillance. He pointed out that both [MPIC's physiatrist] and [MPIC's medical consultant] had concluded that there was no consistency between the Appellant's reported disabled status and how she appeared on the videos. He reviewed and examined, in detail, the six blocks of video surveillance and how the Appellant's activities which were captured on the videos differed significantly from her self-reported activities on her DAL forms, Level of Function forms, and emails to her case manager, as well as her observed behaviour during her assessment at [Rehabilitation Centre] and when being assessed for PCA benefits by the MPIC occupational therapist. He pointed out that over the course of the Appellant's claim, five PCA reports were produced; after the first report the Appellant's self-reported level of disability increased. The Appellant did not report any improvement in her condition to MPIC. Counsel submitted that throughout the period covered by the video surveillance, the Appellant consistently presented herself to MPIC as disabled, whereas her presentation in the videos was as an individual who was not disabled.

Counsel concluded his review by submitting that credibility is a key consideration in this appeal. He argued that based on the evidence before the Commission, the Appellant has clearly provided false information to MPIC in order to sustain her claim for benefits, and therefore little weight should be given to her testimony. She was on the stand for several days giving evidence in direct and cross-examination. Counsel submitted that the Appellant was not a credible witness, often evasive and confrontational on cross-examination. Further, counsel argued that the Appellant's explanation for how she appeared on the surveillance video did not withstand scrutiny. Specifically, the Appellant said:

i) that the video captured her only on good days;

ii) that it was because she was taking medication that she was able to perform well while on her outings; and

iii) that after being out in the community, she needed to go home and "absolutely crash".

Counsel submitted that, in contrast to the Appellant's assertions:

i) it was unreasonable to suggest that 16 days of random surveillance, done over nine months, would happen to capture only good days;

ii) the Appellant had advised her caregivers that her medication was not successful in reducing her symptoms; and

iii) the Appellant is seen on the videos on January 12, 2011, out in the community after the [Rehabilitation Centre] assessment, and in August 2011, spending several days in a row at the dog show, and this rebuts the argument that she needed to go home and "absolutely crash" after physical activity.

There were also inconsistencies identified by counsel between the Appellant's testimony and the documentary evidence contained in the indexed file, relating to her pre-MVA health status and her

medication usage. He argued that these inconsistencies brought her credibility into question, and, in fact, that the Appellant's credibility colours all of her self-reports regarding the amount and frequency of the pain medication she was and is taking. He noted that there is documentary evidence regarding prescriptions given to the Appellant up to August 15, 2011, but there is no objective evidence on whether she was still filling these prescriptions at this level following the termination of her PIPP benefits.

Counsel also submitted that the issue of the Appellant's TMD is "largely irrelevant" to this appeal. He said that MPIC accepts that the Appellant has a TMD condition and noted that certain treatment for this condition was funded by MPIC. However, counsel argued that the subjective reporting of pain by the Appellant should not be given any weight as a result of the overwhelming evidence indicating that the Appellant was not truthful to MPIC in her reporting of her condition.

The Appellant did not at any time report any improvement of her condition to MPIC. Prior to the appeal hearing, she did not advise MPIC that she did have some ability to function, provided that she took her pain medication. She maintained the portrait of disability throughout her claim and counsel submitted that this has been proven to be untrue. Counsel further noted that there are no reports from a mental health professional in evidence which would explain the degree of deception, for example something which might indicate that the Appellant lacked the ability to decipher between what is true and untrue.

Accordingly, counsel submitted that termination of the Appellant's PIPP benefits is the only appropriate remedy under paragraph 160(a) of the MPIC Act, due to the scope and magnitude of the false information provided to MPIC by the Appellant. The Appellant admitted that the information provided by her in her DAL forms was false. She failed to provide a reasonable

explanation for the false information and she was not remorseful. Her duty of good faith towards MPIC was irrevocably breached and the only proper remedy for this is termination of all benefits. No reasonable justification or mitigating factors were provided that would warrant a suspension as opposed to termination. MPIC relies upon reports from appellants of their functional ability to gauge the status of their injuries and determine benefits accordingly. Truthful reporting is fundamental to the relationship between the insurer and the insured and the lack of it is entirely detrimental to the PIPP claim.

Counsel argued that Internal Review decision should also be upheld under paragraph 160(g) of the MPIC Act, as the video surveillance shows that the Appellant was active in the community when she otherwise should have been participating in her rehabilitation program. This disproves the Appellant's reason given to MPIC for not attending, i.e. that she was not capable of participating in the program.

Finally, counsel submitted that the Appellant owes reimbursement of IRI and PCA benefits to MPIC, from January 12, 2011. This is the date of the [Rehabilitation Centre] assessment, and on this date it was clearly shown that the Appellant was providing false information to MPIC. Counsel argued that the surveillance that followed only served to further reinforce what had been uncovered on January 12. As such, repayment should flow from this date. Counsel submitted that the Internal Review decision should therefore be upheld.

Discussion:

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officer erred in his decision dated June 9, 2016. In particular, the Appellant needs to show, on a balance of probabilities, that:

1. She did not knowingly provide false or inaccurate information to MPIC;
2. She did not fail to attend a rehabilitation program provided by MPIC, without valid reason;
3. MPIC did not properly terminate her PIPP benefits; and
4. She is not required to reimburse to MPIC any IRI and/or PCA benefits received by her.

In making our decision, as set out below, the panel has carefully reviewed all of the reports and documentary evidence filed in connection with this appeal and, as noted above, watched all of the surveillance videos. We have given careful consideration to the testimony of all of the witnesses, and to the submissions of counsel for the Appellant and counsel for MPIC. We have also taken into account the provisions of the relevant legislation and applicable case law.

Legislation

The relevant provisions of the MPIC Act are as follows:

> **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; …
>
> (g) without valid reason, does not follow or participate in a rehabilitation program made available by 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.

Preliminary Matter – Credibility of the Appellant

MPIC argued that the Appellant was not a credible witness.

The well-known (and often-cited) test for reviewing the testimony of an interested witness has been articulated by O'Halloran, J.A. of the B.C. Court of Appeal in *Faryna v. Chorny* [1952] 2 D.L.R. 354, as follows (at paragraph 11):

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. ...

The panel notes that there were certain inconsistencies between the Appellant's testimony and certain other evidence. There are three main areas of concern:

1. The Appellant testified that the reason that she was able to be out in the community, as seen on the video surveillance, and manage without any apparent pain behaviours was because she was taking pain medication which was helping her. This is inconsistent with her reports to her healthcare providers that her pain medication was not helping her. [MPIC's physiatrist], in the [Rehabilitation Centre] report dated January 13, 2011, wrote, after taking her history, that her pains "have not responded to pain medications or other interventions in any substantive way". This explanation is not consistent even with the Appellant's own evidence regarding her medication consumption, specifically that when she attended at the rehabilitation program she took her medication. By her own reasoning, if the medication was helping her, she should have been able to perform the exercises provided for her, but she said she found the rehabilitation program too hard.

2. The Appellant testified that after being out in the community, she needed to go home and "absolutely crash". This is inconsistent with her behaviour after the extensive [Rehabilitation Centre] assessment on January 12, 2011, when she is seen on the video surveillance out in the community, and also inconsistent with her behaviour in August 2011, when she is seen on the video surveillance attending at a dog show being physically active for several hours, several days in a row.

3. The Appellant testified regarding her pre-MVA health condition and her pre-MVA use of medication, saying that she was in "great health" and her use of medication was occasional prior to the MVA. This is inconsistent with the report from [Appellant's anesthesiologist], who wrote on May 25, 2010, that the Appellant had a diagnosis of chronic neck and headache pain since her MVA of 1987. He had also written an earlier report, dated March 25, 2010, which described her level of headache pain as between 5 to 7 out of 10 on most days prior to the 2010 MVA. He also said that her symptoms prior to the MVA were under fairly good control (albeit with the pain) with a combination of regular medications including four T3 per day.

The panel finds that these inconsistencies are concerning, in particular because they relate to the fundamental matters at issue in this appeal. When pressed, on cross-examination, regarding matters of inconsistency, the Appellant was often either confrontational or evasive. When faced with incontrovertible evidence regarding her activities out in the community, recorded on the video surveillance, on the same day that she had submitted a DAL form which did not report such activity, the Appellant did admit that there were inaccuracies and omissions on the DAL form. She did not, however, admit to anything else, instead providing alternate reasons for her behaviour on the video surveillance, for example that she was captured only on a "good day", or, on one day at

the dog show, that it was through the consumption of alcohol that she was able to perform well. The panel does not find these alternate reasons to be plausible, or "in harmony with the preponderance of the probabilities" (see *Faryna v. Chorny* above). We agree with the argument of MPIC, that it is unreasonable to suggest that 16 days of random surveillance, done over nine months, would happen to capture only "good" days. Further, while we accept that it is possible that the Appellant was consuming alcohol for one day during the dog show, at no time did she advise MPIC that the consumption of alcohol would have any ameliorative effect on her condition, nor would this explain her behaviour on any of the other days at the dog show.

Applying that same analysis to the Appellant's evidence overall, we find that the inconsistencies in the Appellant's evidence are not reasonably explicable and, combined with her demeanour under cross-examination and taking into account the fact that the inconsistencies bear on the fundamental matters at issue in this appeal, they cannot be ignored.

Accordingly, the panel finds that, on a balance of probabilities, the Appellant was not a credible witness on the fundamental issues.

Did the Appellant knowingly provide false or inaccurate information to MPIC?

As indicated above, in her testimony, the Appellant acknowledged that the DAL forms that she provided to MPIC did not contain an accurate reflection of her activities; rather, there were omissions and inaccuracies in her DAL forms. She stated that she filled out the DAL forms all at once, in order to get them over with, and she said that this may account for some of the inaccuracies contained in those documents. The panel accepts her testimony on this point, specifically her admission that she did not fill out the DAL forms accurately regarding her activities. Counsel for MPIC argued that the Appellant's conduct reflected a consistent and repeated pattern of false

reporting to MPIC. Counsel for the Appellant acknowledged that the Appellant did knowingly provide false or inaccurate information to MPIC, and, as indicated, the Appellant admitted this in her evidence. Based on the provisions of the legislation, the panel finds that this is a contravention of paragraph 160(a) of the MPIC Act.

Based on our review of the video surveillance and the other evidence in this matter, the panel has identified various examples of the false reporting and false information provided by the Appellant to MPIC and its agents. We find it useful to set these out below, as these are relevant to the discussion which follows:

- In her Level of Function form for November 25, 2010, the Appellant identified restriction in almost every listed area, and in particular with right arm overhead lifting. This is in contrast to the video surveillance of the Appellant conducted on November 29 and 30, 2010, in which the Appellant is seen driving herself to various businesses, including a sporting goods store, grocery store, convenience store, bank, coffee shop, and hockey game, as well as taking her van through a carwash and holding the wand of the carwash in her right hand above shoulder height. In her testimony, the Appellant acknowledged that she was making that movement, and further that she chose to go to a manual car wash instead of a nearby automatic carwash.

- In her DAL forms for December 7-13, 2010, the Appellant described herself as being significantly limited in her daily activities, and in particular as needing assistance when going shopping. This is in contrast to the video surveillance of the Appellant conducted on December 14 and 15, 2010, in which the Appellant is seen at a grocery store shopping alone, bending down and lifting a large bag of potatoes, possibly weighing between 10 and

20 pounds and filling a 10 litre jug of water and placing those items into her cart. It should be noted that the Appellant's case manager had requested that the Appellant complete DAL forms for the week of December 14-21, 2010, but the Appellant declined to do so.

- When she attended at [Rehabilitation Centre] on January 12, 2011, for the multidisciplinary assessment arranged by MPIC, the Appellant's physical abilities were assessed over the course of a few hours. [MPIC's physiatrist] concluded that the Appellant showed several functional limitations and as well demonstrated pain behaviours. The Appellant explained this in her testimony by saying that she had not taken her pain medication that morning. She also testified that the [Rehabilitation Centre] assessment was extensive, and that generally after exerting herself, she would need to go home and "absolutely crash". This is in contrast to the video surveillance of the Appellant conducted on January 12, 2011, in which the Appellant is seen, immediately after her attendance at [Rehabilitation Centre], going to stop for coffee, then to a pet store, and only then going home for approximately 1.5 hours. She then returned out into the community, again to stop for coffee, then to pick her son up at school and then to her son's hockey game and she did not return home until nearly 4 hours later.

- In the PCA assessment dated January 17, 2011, the occupational therapist retained by MPIC noted that the Appellant could only complete a partial squat and required external support to do so. She also required support to come back up from a kneeling position and was unable to complete a floor to waist lift. This is in contrast to the video surveillance of the Appellant conducted on January 25, 2011, in which the Appellant is seen attending her son's hockey game with a dog. She does squat down several times to pat and pick up the

dog without any apparent need of support, and picks it up and carries it with no apparent difficulty.

- The Appellant completed DAL forms for March 7-29, 2011. These Logs appear to be extremely detailed and most contain additional notes on the reverse side. Also during this time period, the Appellant had a rhizotomy procedure, on March 16, 2011, and was scheduled to attend at [Rehabilitation Centre] for a rehabilitation program. In her DAL forms for this period, the Appellant reports herself to be significantly disabled. In her email to the MPIC case manager on March 18, 2011, following the rhizotomy, she refers to the "intensity of my reactions" and says that she is "experiencing great difficulties presently". On March 29, 2011, she responded to a further inquiry from the case manager as follows: "I am not doing well at all. I honestly have no idea what to expect over the next couple of weeks as the last few have been terribly painful. Sorry I can't be more specific but I am trying hard to just get through each day right now". This is in contrast to the video surveillance of the Appellant conducted on March 28-31, 2011, in which the Appellant is seen out in the community, both on her own and with one of her sons over the course of four days. While engaging in the activities depicted in the surveillance videos, the Appellant, although occasionally walking in a stiff manner, did not present with grimacing or any other typical pain behaviours. Rather, the videos showed her bending and squatting with no apparent difficulty, lifting items and putting them in a shopping cart and getting in and out of her car multiple times without exhibiting any pain behaviours.

The activities on the surveillance videos were inconsistent for someone with the disabilities reported in the DAL forms, and more specifically they were inconsistent with the activities reported by the Appellant on her March 28 and March 29 DAL forms. In particular, on her

DAL form for March 28, 2011, the Appellant reported to MPIC that she attended for an acupuncture appointment at 9:00 a.m., and a chiropractor appointment at 3:00 p.m. The DAL form also indicates that at 4:00 p.m., "kids help with groceries and dinner". It is unclear whether this entry reflects shopping or simply meal preparation. Apart from these entries, the DAL form indicates that the Appellant was at home all day. In contrast, the video surveillance for March 28, 2011, shows that the Appellant did go to an acupuncture appointment at approximately 9:00 a.m. (stopping briefly at a fast food outlet on the way). After this appointment, the surveillance reflects that the Appellant went home, picked up her son and then went shopping with him. They went to a home store, then to a mall, where they walked the length of the mall on both levels, going into and out of several stores. After leaving the mall they went to two other stores and then to a fast food outlet before returning home. In total they were out for approximately four hours. Apart from the visit to the chiropractor, none of these activities are reflected on the DAL form. Similarly, on her DAL form for March 29, 2011, the Appellant reported to MPIC that she stayed home the entire day until, at 7:00 PM, she went to her son's baseball tryout. In contrast, the video surveillance for March 29, 2011 shows that the Appellant left the house at 10:30 a.m., and went to a tailor's shop, then to a pharmacy, then to a grocery store, where she shopped unassisted and, in addition to two grocery bags, she loaded two four litre jugs of milk into her vehicle. She returned home within one hour. This outing is not reflected on the DAL form.

- In the PCA assessment dated August 22, 2011, the occupational therapist retained by MPIC noted that the Appellant was unable to squat at all and was unable to complete a floor to waist left. She was able to kneel only with support to come up and down and had a sitting tolerance of only five minutes. This is in contrast to the video surveillance of the Appellant

> conducted on August 10, 11 and 14, 2011, in which the Appellant is seen attending a dog show. Over the course of three days, the Appellant is seen on the surveillance video at the dog show setting up a screened in gazebo and portable kennels, stretching, bending, squatting and kneeling without assistance, standing, walking and jogging for a brief period, grooming a dog, carrying several items at a time, sitting for longer than five minutes at a time, and loading and unloading and vehicles. All of these activities reflect an improvement over the level of disability previously reported by the Appellant to MPIC, and, in contrast, the level of functionality reflected in these activities was not reported by the Appellant when meeting with the occupational therapist for the PCA assessment on August 22.

As indicated above, the panel finds that the Appellant did knowingly provide false and inaccurate information to MPIC.

Did the Appellant fail to attend a rehabilitation program, without valid reason?

After the multidisciplinary assessment of the Appellant, [Rehabilitation Centre] recommended a rehabilitation program in their January 13, 2011, report, as follows:

> 1. Re-conditioning program, 4 weeks. The first two weeks would consist of 2-hour sessions, M-W-F, and weeks 3 and 4 would be daily 2-hour sessions. This will allow for gradual introduction and progression with necessary rehab activities in preparation for further programming. This phase, and the following phase can occur in conjunction with interventional pain treatments through the [Rehabilitation Centre] with [Appellant's physical therapist] and [Appellant's anesthesiologist].
>
> 2. Work Hardening Program, modified, 6 weeks. A program with gradually increasing hours would be appropriate to allow the claimant to accommodate to increasing physical demands in the rehab setting. This would be a natural progression of rehab, building upon the gains achieved in the re-conditioning program. …

After some negotiation with the Appellant, MPIC advised the Appellant by letter dated March 2, 2011, that the rehabilitation program would begin at [Rehabilitation Centre] on March 7, 2011.

For the week of March 7-11, 2011, the Appellant attended at the program on Monday, March 7 and Thursday, March 10. She did not attend on Friday, March 11, but she did have a note from a physician excusing her absence for that day. For the week of March 14-18, 2011, the Appellant attended the program on Monday, March 14. She did not attend on Wednesday, March 16, as that was the day of her rhizotomy procedure. Monday, March 14, 2011, was the last day that the Appellant attended at the rehabilitation program.

Based on the foregoing facts, it is clear that the Appellant failed to attend all of the scheduled sessions in the 10 week rehabilitation program provided for her by MPIC. Her counsel acknowledged this in his argument. But a second question arises, being whether the Appellant had a valid reason for her failure to fully participate in the program. Counsel for the Appellant submitted that the reason that she failed to attend was that she didn't think that she would benefit from the rehabilitation program. The Appellant, in her testimony, said that she was in too much pain from the rhizotomy procedure. She also said that she felt that she was being pushed too hard by the staff at [Rehabilitation Centre].

The Appellant's testimony in this regard is inconsistent with other evidence. In particular, [MPIC's physiatrist], an expert in physical medicine and rehabilitation who works at [Rehabilitation Centre] and who evaluated the Appellant, testified that it is their practice at [Rehabilitation Centre] to modify or eliminate any activities if an individual is having difficulty. He testified that at [Rehabilitation Centre] they don't push anybody to do anything, and on some days the Appellant reduced the exercised that she performed. This is also reflected in a letter that [MPIC's physiatrist] wrote to the case manager dated March 10, 2011, which states as follows:

> [The Appellant] is in her first week of rehab. This is her second day. Her life schedule is quite busy with a number of appointments of different kinds and her rehab schedule has been modified to accommodate that. I spoke to her on the rehab floor as she was

> participating in some rehab activities. She mentions that there have been no changes in her medications. She continues to move slowly, with a lot of moaning and sighing when walking and talking. I explained that she is only to do what she is comfortable with, and to the extent that she thinks she can. She mentions that next Tuesday she is going to have a C4 medial branch rhizotomy with [Appellant's anesthesiologist]. She will continue to undergo orientation with the rehab staff, and should let us know if she has any difficulties.

It should be noted that the Appellant's treating physician supported her continuation with the rehabilitation program, subject to any necessary modifications. [Appellant's anesthesiologist], who performed the rhizotomy, wrote to the case manager subsequent to the procedure, and stated as follows in his letter dated April 21, 2011:

> In response to your letter dated March 21, 2011, [the Appellant] did not seem to experience significant improvement in her pain after the rhizotomy performed March 16, 2011, at the C4-5 level on the right side. We do have plans to proceed with a trial of occipital nerve blocks and hopefully this will have a more significant improvement in her pain. I would agree with any modification of the rehabilitation program that will not exacerbate her pain while she is proceeding with this trial of occipital nerve blocks.

As indicated above, subsequent to the rhizotomy, the Appellant advised the case manager, by email dated March 18, 2011, as follows:

> Due to the severity of the procedure I had on Wednesday and the intensity of my reactions, this is the first I have been able to sit and type at my computer. Please be advised that I will not be attending the rehab program at [Rehabilitation Centre] today. I have no idea how my body will react to the rhizotomy over the next few weeks but am certainly experiencing great difficulties presently. [Appellant's anesthesiologist] told me that he would send a letter to [text deleted] stating I have a follow up appointment with him in a month and that we will not know the full effects of the procedure until then and that if I needed time to heal, he would support that.

However, within 10 days of sending that email, the Appellant was recorded on video surveillance out in the community, as detailed above, on March 28 and 29, 2011. She was also recorded on video surveillance out in the community on March 30 and 31, 2011. On March 30, she went on two separate outings, downtown, grocery shopping and to a chiropractic appointment. In total, on that day she was out in the community for approximately 1.5 hours. On March 31, she went on three separate outings, to a coffee shop, to a sports injury office, to a home store, to a clothing

store, to a fast food outlet, to a chiropractic appointment, to a dental appointment, and to pick up her son. In total, on that day she was out in the community for approximately six hours.

The panel finds that the Appellant has not provided a valid reason for her failure to attend the rehabilitation program provided for her by MPIC. Although she testified that she was in pain following the rhizotomy procedure, and in fact [Appellant's anesthesiologist] acknowledges that her pain continued, it is apparent from observing her conduct on the video surveillance that she was able to perform at least some of her normal activities notwithstanding this pain. Further, [Appellant's anesthesiologist] supported the continuation of the rehabilitation program provided that it was modified so as not to exacerbate her pain. [MPIC's physiatrist] testified that the program could, and would, be modified. However, the Appellant failed to return to the program and the panel finds that she had no valid reason for this failure. This was a contravention of paragraph 160(g) of the MPIC Act.

Were the Appellant's PIPP benefits properly terminated?

Given that the panel has found that there has been a contravention of both paragraph 160(a) and paragraph 160(g) of the MPIC Act, the next issue to be determined is: what are the appropriate consequences of that contravention? Pursuant to the provisions of section 160 of the MPIC Act, there are several possible remedies available to MPIC, and thus to the Commission on appeal: "the corporation may refuse to pay compensation to a person or may reduce the amount of an indemnity or suspend or terminate the indemnity".

Counsel for the Appellant argued that, notwithstanding that it was acknowledged that the Appellant provided false information to MPIC and failed to attend the rehabilitation program, her PIPP benefits should be reinstated (at the time of termination, the Appellant had been in receipt of

IRI and PCA benefits). Counsel for MPIC, on the other hand, argued that termination of the Appellant's PIPP benefits was the only appropriate consequence for her actions (counsel referred to all of the Appellant's PIPP benefits).

As noted above, counsel for the Appellant did not specifically articulate an argument regarding any alternative remedy to termination of benefits, other than reinstatement. Nevertheless, the panel has considered the Appellant's position in the context of the provisions of the legislation, and specifically has considered whether arguments raised by counsel could constitute mitigating factors such as would militate in favour of substituting some consequence other than the termination imposed by the Internal Review decision.

Counsel for the Appellant argued that she was misdiagnosed, and that this misdiagnosis, and lack of appropriate treatment for her TMD, led to additional pain for the Appellant. Assuming that this was the case, the Appellant would need to establish that this misdiagnosis, or pain, was connected to, or a reason for, her actions in providing false or inaccurate information to MPIC, or in failing to attend the rehabilitation program.

The panel accepts that the Appellant continued to feel pain, regardless of whether or not she was misdiagnosed. Notwithstanding this, however, and as noted above, we find that subsequent to the rhizotomy procedure, the Appellant would have been able to attend the rehabilitation program. Therefore, even if she were misdiagnosed, any misdiagnosis would not be connected to her failure to attend the rehabilitation program. As noted above, subsequent to the rhizotomy, the Appellant was able to be out in the community. Therefore, even if the rhizotomy was the incorrect treatment because of a misdiagnosis, the Appellant nevertheless had the functional ability to attend the rehabilitation program.

Nor is any pain or possible misdiagnosis connected to, or an explanation for, the false information regarding her daily activities provided by the Appellant to MPIC on the DAL forms and in emails in March 2011, subsequent to the rhizotomy procedure. On the reverse side of her DAL form for March 29, 2011, the Appellant wrote the following:

> I have to stop filling in these logs as they are only proving to cause me more stress and are a constant reminder (multiple times a day) of my pain and inabilities! This is not good for me and certainly isn't helping me in feeling better about myself and condition.
>
> If I don't fill them in every couple of hours, I have difficulty remembering my sequence of events as my memory & concentration is non existant (sic). [emphasis in original]

In her testimony, the Appellant said that she filled out the DAL forms all at once. However, she also said, regarding this note, that if she did not fill in the DAL forms every couple of hours, then she had a hard time remembering what to fill in. Since she refers to the forms in the note as a "constant reminder", we conclude that she was, at that time, tending to them frequently. Further, it is clear that the Appellant understood the necessity and importance of these forms to MPIC. On April 18, 2011, the case manager wrote to her to inquire as to her status. She responded by email as follows:

> … I am having such severe pain and difficulty since the March 16th surgical procedure. I would like to request extra coverage for my PCA dating back to March 16th (date of surgery) to present as I have required much more assistance since then. I am sure you have had an opportunity to read through the daily logs I submitted which certainly explains my level of function. … [emphasis added]

Therefore, since the Appellant was able to attend to the forms, and understood their purpose, the Appellant cannot rely on her pain or any possible misdiagnosis as a mitigating factor for the false information contained in the forms.

Counsel also pointed to the November 11, 2011, report from [Appellant's psychologist], who stated that he was "not in favor of her journalizing her physical symptomatologies". To be considered a mitigating factor, the Appellant would need to be able to show when she received this advice, and how it was connected to, or a reason for, her actions. In his report, [Appellant's psychologist] noted that he met with the Appellant initially in January, 2011, and subsequently on March 10, 2011, to complete the assessment, and in April, June and September, 2011, for follow-up consultations. In the report, the relevant paragraph is found under the heading "Subsequent Course" and states as follows:

> On June 15, 2011, she informed me that she had been prescribed Cymbalta … I spoke to [her] about the importance of lifestyle normalization … and I informed her that I was not in favor of her journalizing her symptomatologies ...

It would appear, then, that this advice was provided to the Appellant subsequent to the completion of the last DAL form that she provided to MPIC (March 29, 2011).

While it is possible that the Appellant had discussed with [Appellant's psychologist] his concerns regarding the DAL forms at their sessions in January or March, 2011, it appears that, based on her own words, at least at the end of March, 2011, as noted above, she was attending to the forms "every couple of hours". Therefore, any advice received from [Appellant's psychologist] cannot constitute a mitigating factor with respect to the Appellant's false statements in the DAL forms. Nor does it appear to be germane to her actions in not attending the rehabilitation program.

In summary, the Appellant has not provided any mitigating factors which would militate against the termination of her IRI and PCA benefits. On the contrary, and as detailed above, the Appellant's false statements were not a one-time occurrence, but rather a repeated series of events,

which gradually increased in magnitude as the Appellant's functionality increased even as she continued to report herself as disabled to MPIC.

The panel finds that the Appellant has failed to establish, on a balance of probabilities, that there are any mitigating factors which should lead the Commission to impose anything other than a termination of the Appellant's IRI and PCA benefits.

Addressing the submission of counsel for MPIC, that all of the Appellant's PIPP benefits should be terminated, the panel notes that the only benefits which were addressed in detail in this hearing were the Appellant's IRI and PCA benefits. The panel does not find it necessary to make a finding which extends beyond those benefits and specifically declines to do so. Accordingly, for greater certainty, the only benefits which are terminated are the Appellant's IRI and PCA benefits.

Did the Appellant receive any PIPP benefits to which she was not entitled?

Given that the panel has found that the Appellant's IRI and PCA benefits should be terminated, the next issue to be determined is the effective date of that termination. Pursuant to the case manager's decision dated December 28, 2011, and upheld in the Internal Review decision dated June 9, 2016, MPIC determined that the effective date of termination should be January 12, 2011. Counsel for MPIC submitted in his written argument that:

> This [January 12, 2011] was chosen as it was the date of the [Rehabilitation Centre] assessment and on this date that it was clearly shown that the appellant was providing false information to MPI. The surveillance that followed only served to further reinforce what had been uncovered on January 12. As such, repayment should flow from this date.

The panel has considered this argument, but has come to a different conclusion. Although, as noted above, there were instances of the Appellant providing false information to MPIC in November and December, 2010 and in January, 2011, we find that it was not until March, 2011 (when the

Appellant ceased attending the rehabilitation program at [Rehabilitation Centre]), that her DAL forms and the emails that she provided to MPIC vastly differed from the activities in which the Appellant was seen on the video surveillance, as detailed above. Specifically, we find that the termination of the Appellant's IRI and PCA benefits is upheld from March 28, 2011, the first date when it was established that the Appellant's reports to MPIC vastly differed from her activities as recorded on the video surveillance.

As a result, pursuant to subsection 189(1) of the MPIC Act, the panel finds that the Appellant is responsible for reimbursing to MPIC any IRI and PCA benefits which she received from March 28, 2011 to the date of the case manager's decision.

Conclusion

As indicated above, the panel finds as follows:

1. The Appellant did knowingly provide false or inaccurate information to MPIC, within the meaning of paragraph 160(a) of the MPIC Act.

2. The Appellant did fail to participate in the rehabilitation program made available by MPIC, without a valid reason, within the meaning of paragraph 160(g) of the MPIC Act.

3. The Appellant's IRI and PCA benefits were properly terminated within the meaning of section 160 of the MPIC Act. The effective date of this termination should be March 28, 2011.

4. The Appellant did receive IRI and PCA benefits to which she was not entitled, starting on March 28, 2011 and ending on the date of the case manager's decision, December 28, 2011. The amount of these benefits must now be reimbursed to MPIC pursuant to subsection 189(1) of the MPIC Act.

Disposition:

In summary, and for the reasons outlined herein, the Commission finds:

- that the Appellant's IRI and PCA benefits should be terminated as of March 28, 2011,

pursuant to paragraphs 160(a) and (g) of the MPIC Act; and

- that the Appellant should repay to MPIC any IRI and/or PCA benefits received by her from March 28, 2011 to December 28, 2011.

For the sake of clarity, it is confirmed that the only PIPP benefits terminated by this decision are the Appellant's IRI and PCA benefits.

The Internal Review decision dated June 9, 2016, is varied accordingly to take into account the foregoing; in all other respects it is upheld.

The Commission shall retain jurisdiction in this matter and if the parties are unable to agree on the amount of IRI and/or PCA benefits to be repaid by the Appellant to MPIC, either party may refer this issue back to the Commission for final determination.

Dated at Winnipeg this 15th day of November, 2018.

JACQUELINE FREEDMAN

GUY JOUBERT

SANDRA OAKLEY