Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-060, AC-13-157, AC-14-062, AC-15-244, AC-16-002, AC-17-038

PANEL:	**Pamela Reilly, Chairperson** **Sharon Macdonald** **Lorna Turnbull**
APPEARANCES:	**The Appellant, [text deleted], was represented by [text deleted];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka**
HEARING DATE:	**February 1, 2021**
ISSUE(S):	**Whether the Appellant's motor vehicle accident (MVA) of February 5, 2009 caused his current medical conditions thereby entitling him to Personal Injury Protection Plan (PIPP) benefits.** **Whether the Appellant is entitled to a Permanent Impairment (PI) benefit for his current medical conditions.** **Whether the Appellant is entitled to payment for dental treatment proposed by [endodontics specialist] on September 18, 2015 for tooth #18.** **Whether the November 19, 2013 Internal Review Decision (IRD) correctly upheld the Case Manager's assessment and calculation of the Appellant's PI benefits for teeth #16, #27 and TMJ.** **Whether the Appellant is entitled to chiropractic treatment.**
RELEVANT SECTIONS:	**Sections 70(1), 127, 136(1)(a) and Reg. 40/94 section 5, Reg. 41/94 Schedule A 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

Issues:

Did the Appellant's motor vehicle injury of February 5, 2009 (the "MVA") cause a number of prolonged pain complaints the Appellant currently experiences and for which MPIC should pay PIPP benefits?

Is the Appellant entitled to further chiropractic treatment?

Is the Appellant entitled to additional permanent impairment benefits for his jaw and teeth injuries?

Did the February 5, 2009 accident cause damage to Tooth #18 for which MPIC should pay PIPP benefits.

Decision:

The panel dismissed the Appellant's appeals and confirmed the Internal Review Decisions (IRDs).

Background:

On February 5, 2009, another driver rear-ended the Appellant's vehicle. Repairs to the Appellant's rear bumper cost $483.69 to repair chipped paint.

MPIC has paid PIPP benefits for physiotherapy and chiropractic treatment it considered related to the MVA. MPIC has paid Permanent Impairment ("PI") awards related to the Appellant's Temporomandibular Joint (TMJ) disorder, as well PI awards for damage to various teeth.

In subsequent and various IRDs, MPIC has denied paying the Appellant additional PIPP and PI benefits related to the following:

1. Both knees;
2. Left hip;
3. Left shoulder rotator cuff;
4. Left ankle;
5. Right pinky finger fracture;
6. Enlarged heart;
7. Tooth #18;
8. Additional PI benefits for his TMJ disorder;
9. Additional PI benefits for Teeth #16 and #27; and,
10. Additional chiropractic care.

The Appellant appealed these IRDs to the Commission.

Preliminary Matter:

At the commencement of the hearing, both parties acknowledged and agreed that MPIC had not issued an IRD about whether the Appellant was entitled to compensation for his enlarged heart. They agreed that the issue was causation. That is, did the 2009 MVA cause the Appellant's enlarged heart? Both parties agreed that the panel had jurisdiction to consider and render a decision on that issue, despite no prior IRD.

Appellant's testimony and documentary evidence:

The Accident

The Appellant testified about his rear-end collision of February 5, 2009 that occurred a short distance from his home. He had stopped to make a left hand turn into his back lane. With reference to the oncoming vehicle he said, "I noted he was coming with speed." This driver struck the rear passenger-side corner of the Appellant's vehicle. He testified that his jaw and head hit the steering wheel, his knees hit the steering wheel, and his ankle hit the brake. He said that he had "foam and blood coming from [his] mouth." He was in shock and said, "My two legs were paralyzed."

The Appellant testified that the other driver came over to the Appellant's vehicle and the Appellant tried to speak with the foam and blood coming out of his mouth. The other driver said he was sorry. When the other driver returned to his vehicle, the Appellant thought he was going to get paper to write down details, but instead, he drove away. The Appellant obtained a partial licence plate number and apparently, a passerby called the police. The Appellant said that he waited a long time until his brother came and pulled his car away. The police later arrived at the Appellant's house and the Appellant gave them the partial licence plate number. The Appellant agreed in cross-examination that the damage consisted of repairing chipped paint on his bumper.

The Appellant testified that he was afraid he would be in trouble and not believed, if he did not first provide a police report to MPIC. Therefore, he waited and made his MPIC statement on March 5, 2009. The statement said that the Appellant "was injured in the accident". It did not detail any other injuries such as blood or foam coming from his mouth. When asked to explain this discrepancy in cross-examination, the Appellant responded, "I wanted to keep the accident to myself. I don't want to tell anybody because I didn't have the evidence." When reminded that this was his true statement to MPIC, the Appellant replied, "I was waiting to get a hold of the guy. One time I had a problem with MPIC, they said I was a liar. I had gone for therapies. I don't think I told them about that or not."

Misericordia Urgent Care Feb. 6, 2009: Reported injuries heart, left neck, back, chest and left knee

The Appellant testified that he was in pain overnight. He went to the [hospital] the next day. The doctor ordered an x-ray. The Appellant testified, "The most important thing was my heart." He testified that the doctor told him he had an enlarged heart and gave the Appellant medication. The doctor also recommended physiotherapy.

[Text deleted], the [hospital] emergency room physician, provided a narrative report of the Appellant's treatment on February 6, 2009. [Emergency room physician]'s report

stated that the Appellant provided him with “a police report #R09-8251”. [Emergency room physician] documented pain in the Appellant’s left neck, back and chest, and in his left knee. He noted the “presence of an early systolic [heart] murmur”. [Emergency room physician] did not document any injuries to the Appellant’s face or head and the Appellant did not complain of any injury to his head. [Emergency room physician] reported that, based upon his examination and the x-ray results, he diagnosed the Appellant with contusions of the chest and left knee, provided a prescription for Tylenol #3 and recommended that the Appellant attend a physiotherapist. [Emergency room physician] recorded that the Appellant should be able to return to work by February 16, 2009 and further stated, “I have to believe I thought his prognosis was excellent.” A chest x-ray on the same day recorded an enlarged heart.

When cross-examined that he did not report facial or left ankle and knee injuries to [emergency room physician], the Appellant responded that, the medical record was wrong. He said he complained about his left side and his upper back and the doctor told him, “The most serious is my heart.” When asked about his prognosis for recovery being excellent, the Appellant maintained that he suffered serious injury from his MVA. He said, [emergency room physician] “didn’t do the exam of my knee, he only did the heart and said there’s a problem on the left side.”

[Text deleted], Chiropractor

MPIC cross-examined the Appellant about apparent inconsistencies between his testimony and statements contained in the April 2, 2012 report of the third party chiropractor, [text deleted]. The report stated, “His jaw struck the steering wheel, causing immediate pain and bleeding. His right knee hit the dashboard…” The Appellant responded that [chiropractor] “wasn’t nice to me” and said he gave [chiropractor] “all the information that he asked of me”. That is, he told [chiropractor] how the accident happened and that the other car “took off”. He further responded, maybe he did not recall, and maybe he did tell the staff at [hospital] “about my mouth” because they told him to go to a dentist.

MPIC cross-examined the Appellant about [chiropractor]'s statement that there were "discrepancies between [the Appellant's] stated symptoms and physical limitations and those observed when the focus was away from examination." In particular, [chiropractor] observed the Appellant walk with a limp during the examination. However, after the assessment, [chiropractor] reported his "Observations", as follows:

> Following the assessment I observed [the Appellant] to walk by my office window without a limp and carrying [sic] shopping bag with right arm. Observed freedom of movement far greater than those formally measured.

When MPIC questioned the Appellant about this recorded observation, he did not initially respond to the question. When again offered the opportunity to address the statement, the Appellant replied, "Why would he be looking out of the window? I'm not making my injury up. I don't agree with him."

Initial Physiotherapy and Physician visits

The Appellant testified that after his MVA, he went for physiotherapy. The physiotherapist's Initial Therapy Report, dated February 11, 2009 recorded a clinical diagnosis of multiple trauma – chest, ribs, thoracic spine, jaw and bilateral knees. The record also documented the Appellant's pre-existing right shoulder, arm and hand problems, for which the Appellant regularly took prescription or over the counter pain medications. The Appellant's doctor also submitted a Primary Health Care Report dated February 20, 2009, which documented a clinical diagnosis of WAD 2 (whiplash disorder) and noted the Appellant's prior chronic pain in his right hand and right arm.

Tooth #18

The Appellant testified, "All of my teeth were in order before the accident." The Appellant outlined his visits with various dentists, prosthodontists and oral surgeons since his MVA. He has had surgery on his jaw. On November 2, 2011, [oral surgeon] performed TMJ arthroscopy and recorded "moderate adhesions" with "minimal disc displacement" He said that his dentists have told him all of his teeth are damaged and sensitive. The Appellant said he can not eat because all of his teeth are fractured and numb.

The Appellant testified that his endodontics specialist, [text deleted] told the Appellant "there's a crack in tooth #18" and "there's another tooth growing underneath Tooth #18." The Appellant implied that [endodontics specialist] said the MVA caused the crack in Tooth #18. The Appellant said Tooth #18 needed repair because [endodontics specialist] would use Tooth #18 to anchor the Appellant's bridge.

According to dental reports, the Appellant first requested treatment for Tooth #18 in 2014. [Endodontics specialist]'s report dated September 18, 2015 stated, as follows:

> … On his right maxilla, tooth #18 continues to show pulpitic symptoms which are likely due to a possible coronal micro crack. This tooth is sensitive to both thermal changes and biting. I cannot determine if this potential crack is due to the initial accident.

[Endodontics specialist] provided a subsequent report dated September 28, 2016, which stated, among other things, as follows:

> … Upon reassessment we were unable to find a crack in tooth #18 but the tooth is still sensitive.
>
> …the majority of his sensitivity comes from the fact that the crown covering this tooth has been removed, thus exposing the dentin. ...I do not know when the original crown was done on tooth #18 but… I have a radiograph dated 2013 which shows there was no crown preparation at that time...

[Text deleted]'s dental report dated October 17, 2016 stated, "X-ray from 11/07/16 shows me crown present. Picture taken today shows # 18 prepped for a crown but no crown present." [Text deleted] did not examine the Appellant immediately after the MVA and therefore could not conclude that the MVA caused damage to Tooth #18.

TMJ

[Text deleted], the Appellant's dentist, provided a report dated October 25, 2015. The report stated that since his first appointment in March 2006 (pre-MVA), the Appellant "had generalized occlusal wear which resulted in exposed dentine and some sensitivity." The

report also stated that in January 2008 (pre-MVA) the Appellant's "right TMJ area… was starting to bother [the Appellant]. A night guard was recommended".

The Appellant referred to the May 1, 2019 letter from [dentist #2], which stated that the Appellant had "extremely limited" jaw range of motion. The letter recorded a jaw opening measurement of "0 mm". A prior letter from [dentist #2] dated August 20, 2013 recorded the Appellant's maximum jaw opening as 34 mm. The Appellant said that MPIC should base his PI award upon the "0 mm" measurement.

In cross-examination, MPIC asked if the Appellant had a jaw condition prior to the 2009 MVA. The Appellant agreed that he had a prior jaw injury saying, "I did, but it was healed." In response to a question about [Appellant's dentist]'s specific comment of TMJ in 2008, the Appellant responded that he went to [Appellant's dentist] for teeth cleaning. He did not concede a prior TMJ problem at that time. The Appellant testified that his dentist told him in 2008 that he was older and his teeth were "ground down in the night."

Teeth #16 & #27

The Appellant confirmed that he sought an additional PI award for Teeth #16 & #27. He did not provide additional documentation related to this claim. In response to a question from the panel, the Appellant agreed that the information and percentages used by MPIC to calculate the PI for Teeth #16 and #17 was correct. However, he believed that MPIC should pay a higher amount of PI. (Note: Tooth #18 is a separate issue.)

Various bodily pain

The Appellant reiterated his belief that his 2009 MVA caused his left shoulder, lower back, left and right knee, and left ankle pain. He explained that he had a workplace injury in 1991 for which he submitted a Workers Compensation Board ("WCB") claim. He testified that the workplace injury involved his right shoulder and right hand.

In the Appellant's MPIC Application for Compensation dated and signed July 16, 2009, the Appellant stated as follows:

> I was involved in a workplace accident in March 14, 1991… cans and bottles fell on me. I injured my lower back, right shoulder, [and] right wrist. In June 24, 1991, I was riding my bike when a car hit my front tire and I fell off. I injured my left knee, left ankle and left shoulder. These injuries healed. I developed chronic pain syndrome from my work injuries and have an ongoing claim with Workers Compensation… I started collecting CPP Disability around 1994. They accepted my claim for chronic pain syndrome. This is related to my work injury, right shoulder, right arm and right hand and lower back."

Right baby finger fracture

Despite the workplace accident injuries to his right shoulder and right hand, the Appellant testified that in May 2010, an x-ray identified a healed, right hand fracture, which doctors had not found before. The May 5, 2010 x-ray report states, "There is an old healed fracture of the mid shaft of the fifth metacarpal. No other bone or joint abnormality is seen." The Appellant testified that he sometimes experienced swelling or a "shock" in his right baby finger, and referred to a number of x-ray and medical reports related to his right baby finger (i.e. the "fifth metacarpal").

An x-ray dated March 3, 2010 recorded a "deformity of the midshaft of the fifth metacarpal relating to a healed fracture in this region." In a September 21, 2010 "Consult/Referral" letter to WCB, [orthopaedic specialist] described the Appellant's x-ray of the same date as follows:

> … The x-ray of the right hand indicated that there was a very well-healed minimally displaced mid shaft fracture of the 5th metacarpal bone. This would not explain his [right wrist] pain.
>
> …
>
> … As for the right hand, the fracture had very well healed and I do not know why he is symptomatic with his right hand. …I am quite certain he was investigated for this condition before and… he should go back to [Appellant's physician]…

[Text deleted] provided a report from the [hospital], Department of Internal Medicine, and Section of Neurology dated August 20, 2010 in which he examined the Appellant and reported as follows:

> [The Appellant's] history of present illness dates back to a work-related injury in 1991… He has had decreased range of movement since that time, and has had difficulty specifically with functioning of his right hand. He has had significant chronic pain. …He is right-hand dominant, and this has compromised his ability to function at home and at work. He reports no acute onset of symptoms over the past year.
> …
>
> **Impression:**
> [The Appellant] appears to be suffering from chronic pain secondary to a work-related injury affecting his right shoulder and upper extremity.

In his testimony, the Appellant referred to a May 13, 2015 letter from [orthopaedic specialist], which stated that the Appellant "injured his right hand at the time of the February 5, 2009 accident fracturing the fifth metacarpal bone." The Appellant said that because [orthopaedic specialist] was an orthopaedic specialist, his statement was more correct than [text deleted]'s was.

In cross-examination, the Appellant conceded that the 1991 workplace accident could have caused the right hand fracture. The Appellant agreed that he is pursuing Workers Compensation in court for his right hand and right shoulder injury. Nonetheless, the Appellant sought PIPP benefits for his right pinky finger fracture because of the 2010 x-ray, and [orthopaedic specialist]'s statement saying the Appellant fractured the finger in his 2009 MVA.

The Appellant's physician [Appellant's physician] provided a note dated June 9, 2009, which stated the Appellant, "…is unable to use his (R) arm & hand due to injury 1991…" [Appellant's physician] also reported about the Appellant's 1991 workplace accident to the Workers Compensation Board by letter dated June 16, 2010. [Appellant's physician] concluded that the 1991 accident caused severe right shoulder pain, as well as loss of movement and sensation in the Appellant's right hand. He confirmed the diagnosis of "chronic pain syndrome and shoulder-hand syndrome", from which the Appellant had

been suffering since the 1991 accident. Therefore, he concluded these complaints "must have been caused by the [1991] accident."

A subsequent MRI report of the Appellant's right hand, dated September 22, 2011 recorded degenerative changes, fluid in the joints and small cysts. An x-ray report of the Appellant's right hand dated March 8, 2013, and an MRI of the right hand dated July 3, 2013 recorded moderate osteoarthritis present.

A report from rheumatologist [text deleted] dated November 9, 2016, reported as follows:

> He was involved in a workplace injury back in 1991…while working at [grocery store]. He sustained a right shoulder and hand injury, i.e., 5th digit.
>
> …
>
> IMPRESSION & RECOMMENDATIONS: As outlined, [the Appellant] has had a number of injuries and has significant osteoarthritis. However, his description of pain and limitation is beyond what I would have expected post-injuries. That is why I am wondering whether or not he may have some features of a chronic pain syndrome."

Left shoulder

The Appellant testified that a 2008 MRI did not show anything related to his right shoulder (not part of this claim) or knees. However, in 2011, another MRI found a right rotator cuff tear, which the Appellant said WCB denied, so he went to court. He said that MPIC also denied his claims because MPIC said his injuries were work-related.

The Appellant testified that prior to his 2009 MVA; his only physical problem involved his right shoulder. Now his knees hurt. He repeated that he injured his ankle but now said his ankle, "hit on the floor where the brake is." He referred again to the MVA and gestured how, on impact, both hands hit the dashboard and that is how he hurt his left shoulder. (He also now said that his teeth, rather than jaw, hit the steering wheel.)

He testified that he did not have problems with his left shoulder previously. He explained that because he did not receive proper treatment for his left shoulder and knees after his

MVA, this caused the degenerative arthritis and bursitis that he now suffered. (Various x-ray and MRI imaging reports described degenerative osteoarthritis and bursitis.)

The Appellant referred to the November 16, 2017 MRI of his left shoulder. This MRI found, "low grade bursal sided tear of the supraspinatus tendon… very mild subacromial/subdeltoid bursitis" and "mild AC (acromioclavicular) and remote second degree sprain".

The Appellant also referred to a June 20, 2018 report from [text deleted] which states, as follows:

> IMPRESSION AND PLAN: Left shoulder rotator cuff tendinopathy/rotator cuff impingement. No large associated functional limitation and he is not keen on surgical management at this time.
>
> …
>
> Rotator cuff tendinopathy tends to have a waxing and waning course and I do anticipate that his symptoms will go up and down depending on his activity level. No discrete activity restrictions are in place and he may continue with all duties as able.

The Appellant testified that he had shoulder surgery on April 17, 2019. He referred to the operative report of [text deleted], which states as follows:

> POSTOPERATIVE DIAGNOSES:
> 1. Left SLAP tear.
> 2. Rotator cuff impingement.
> 3. Subscapularis rotator cuff tear.
>
> …
>
> [The Appellant]… had been having ongoing pain since a car accident in 2009. He reports that this worsened over the last two years. … We reviewed an MRI from 2017, which showed tendinopathy and a SLAP lesion with no evidence of full-thickness rotator cuff tear…

The Appellant testified that this surgery did not completely resolve his left shoulder complaints.

Knees and ankles

As previously stated, the Appellant testified his knees hit the steering wheel (or dashboard) and because he did not receive proper treatment after his MVA, this caused his degenerative arthritis.

A February 15, 2019 report of [doctor] stated that the Appellant had “right knee pain for several years, which got worse recently…The [Appellant] ambulates well…X-ray examination shows advanced degenerative arthritis of right patellofemoral joint.”
The Appellant said that since his consult with [doctor], he has had “a problem with [his] foot, toes and ankle”. His doctor referred him to dermatologist, [text deleted]. [Dermatologist] reported that he first examined the Appellant in October 2008 for right hand complaints. Over the years, [dermatologist] treated the Appellant for various skin conditions of his hands and feet, and prescribed topical and oral antibiotherapy. [Dermatologist] also excised painful corns from the Appellant’s left and right feet. [Dermatologist] reported, as follows:

> Corns and calluses can be the result of weight bearing and can develop due to discomfort when walking, especially that [sic] he has experienced pain of the knees and ankles following the 2009 vehicle accident.

Cross-examination left shoulder, knees, and ankle

MPIC cross-examined the Appellant about a November 12, 2003 (pre-MVA) letter from psychologist [text deleted] to the Appellant’s medical doctor. [Psychologist] stated that the Appellant described, “Pain [that] occurs in the left shoulder and knee but is not seen as overly bothersome. Pain in the right shoulder and hand is described as extremes of cold and heat (‘on fire’) rather than typical pain sensation.” The Appellant responded in cross-examination that he had no problem with his left shoulder, saying he had, “Minor pain, maybe.”

[Psychologist]’s letter described other complaints such as, “weakness in left knee. He walks with a cane, evidences of limp, and the left foot is not placed evenly on ground when walking.” When questioned about these comments, the Appellant again responded that he had “maybe minor pain” in his left knee but “not like I do today” and that he started

using a cane in 1994 “when I fell down from the bike – I think it was the right knee that required a cane”.

MPIC questioned the Appellant about his 1991 bike accident and testimony at a 1998 trial in which the Appellant had sued MPIC for compensation. That court decision stated that the Appellant was crossing from south to north in a [text deleted] crosswalk when an eastbound vehicle failed to stop. The vehicle struck the Appellant’s “left ankle and lower leg knocking him and the bicycle in a southeasterly direction onto the pavement.” The Appellant did not concede that the vehicle struck his ankle and leg. He variously responded, “Maybe – it was a minor pain” and, “The car didn’t touch me and I fell down.”

Left hip

The Appellant testified that sometimes he could not properly sit or squat because of his left hip pain. He said the MVA caused his left hip problem when he “was raised up and then bounced on the seat” (presumably from the force of the collision). The Appellant referred to a June 9, 2009 report from his physician [Appellant’s physician] that stated, “Unable to squat [due to] MVA 2009”. The Appellant testified that his 2009 MVA caused his left sided injuries, which involved his left shoulder, left hip, and left leg.

Enlarged heart

In addition to the testimony about the [hospital] records showing his enlarged heart, the Appellant testified that in 2018 and 2019 his doctor conducted tests for his heart. The doctor prescribed aspirin and told the Appellant to return, presumably for follow-up. The Appellant had not yet returned because of the COVID-19 restrictions.

Current health, education and income

He summarized his current health saying that he did not feel well. He said that sometimes he cannot eat and is ashamed to chew in front of people. He said he sometimes cannot talk and all his teeth are numb. He received injections in his left shoulder to reduce pain. He wears a brace to reduce pain and swelling in his left knee, and said he required a knee replacement. He emphasized that the 2009 MVA was not his fault.

The Appellant said that he emigrated from [text deleted] in 1978 and completed his high school in [Manitoba]. He had degrees in political science, economics and plant science from the [university]. He volunteered at [text deleted], the [text deleted] Centre and within his [text deleted] community. He received a monthly disability income.

Re-direct

The Appellant's representative asked the Appellant why he did not mention the blood in his mouth. The Appellant responded as follows:

> I told the hospital [urgent care] about my teeth. They told me to go to the dentist. [Emergency room physician] told me to go and get two weeks off. And then he gave me a letter to go to physiotherapy, which I did. He also said - - told I think about my mouth, go to my dentist. I went to talk about my accident and the injuries that I saw. And he mentioned that - - my injury was mainly on my left side and knee. He said the most important thing was my heart.

Imaging reports: cervical spine; knees; left ankle; left shoulder

An MRI report of the Appellant's brain/cervical spine and brachial plexus, dated November 1, 2010, recorded degenerative disc narrowing at C4-C7. An MRI report of the Appellant's cervical spine, dated November 25, 2010 recorded multi-level cervical spine degenerative changes.

An x-ray report of the Appellant's right knee, dated June 23, 2011, recorded osteoarthritis. An x-ray of the Appellant's right knee, dated November 20, 2013 documented early osteoarthritis. An x-ray of the Appellant's left ankle and both knees dated April 4, 2014, indicated no significant bone or joint changes for the left ankle, however, both knees showed mild to moderate osteoarthritis.

An x-ray report of the Appellant's left shoulder and left knee, dated February 15, 2017 recorded a mild malalignment of the left AC shoulder joint, and severe osteoarthritis of the left knee.

[Appellant's wife] testimony

The Appellant's wife testified on his behalf. Prior to the hearing, she had provided a typed statement. She confirmed that she wrote the statement and it was in her own words. She testified that the couple had four children who were all under the age of majority at the time of the Appellant's 2009 MVA. Since the MVA, she testified that the Appellant had been unable to work. Her employer is the [text deleted] and she supported the family, financially, by working full time, with occasional over-time shifts.

She testified that the Appellant had a workplace injury. She said that before his MVA, the Appellant's problems were his right shoulder, minor right hand and low back pain. She said the Appellant could not chew his food properly because all of his teeth hurt, and he complained of his right jaw pain despite his jaw surgery.

[Appellant's wife] testified that the Appellant sometimes complained of heartburn, and that he had problems with both of his shoulders, mostly his left, which gets stiff. She said the Appellant used a knee brace for both of his knees, could not climb stairs, and suffered numbness in his legs and hips. He could not cut his toenails. She said the Appellant received injections (for pain).

Appellant's submission:

The Appellant's representative emphasized that liability was important, the "number one" issue. He submitted that the Appellant must receive fair treatment. He correctly acknowledged that the Appellant need not prove his case beyond a reasonable doubt, but must prove it based upon a preponderance of evidence. The Appellant's representative correctly pointed out that the panel must determine whether the February 5, 2009 MVA led to the Appellant's suffering today.

He submitted that cause and effect was very important. He said that the Appellant did what he was supposed to (i.e., used his turn signal) while stopped to make a left hand turn, and he was rear-ended. The Appellant was not at fault. Now, the Appellant needed dental treatment and treatment for his other ailments. The Appellant believed that Tooth #18 was cracked and "something must have led to that."

The Appellant's representative spoke about Supreme Court of Canada cases that discussed damages for pain and suffering. He said the Appellant faced a diminished quality of life, and MPIC's Permanent Impairment award was not a fair amount. In rebuttal, the Appellant referred the panel to the October 27, 2011 dental report by [oral surgeon], which provided jaw opening, right and left laterotrusion, and protrusion measurements.

MPIC's submission:

Counsel for MPIC submitted that the Appellant has the onus of proving that the IRDs were incorrect in deciding that the MVA did not cause the Appellant's symptoms. He pointed to three relevant considerations. These were 1) the circumstances of the MVA, 2) the injuries reported by the Appellant in the critical period after the MVA, and 3) whether the MVA caused the Appellant's later reported symptoms.

Counsel for MPIC recapped the February 5, 2009 rear-end collision. He submitted that there was minimal damage to the vehicle's rear bumper, which cost $483.00 to repair paint scratches. He referenced s. 170(1) of the MPIC Act, which required that in order to receive PIPP benefits, the Appellant must prove that the use of his automobile caused his bodily injuries.

He referred to the [hospital] Urgent Care records (one-day post MVA) that documented the Appellant's injuries as chest pain, upper back pain, left neck pain, and left knee pain. Six days post MVA; the Appellant described his complaints to his physiotherapist as pain to sternum, thoracic spine, bilateral knees, and right side of jaw. The physiotherapist concluded the Appellant would be able to return to modified work duties within 2 weeks.

[Text deleted], the Appellant's primary medical doctor, documented the Appellant's complaints as left and right neck pain with limited range of motion, left and right shoulder pain, left and right chest pain, and left and right knee/leg pain. Finally, in his July 16, 2009 MPIC Application, the Appellant described his injuries as sore right jaw, sore both knees, sore neck, right ankle, upper back and chest.

Counsel for MPIC submitted that the reported injuries in the earliest documents were the most reliable. He submitted that the Appellant described worse injuries as time went on, which led to inconsistent statements that the Appellant did not adequately explain. The inconsistent statements adversely affected the Appellant's credibility. Counsel for MPIC referred to the Appellant's March 30, 1998 trial decision that alleged motor vehicle injuries on June 24, 1991. The judge did not believe the Appellant or his witness' testimony and concluded that the Appellant had not proved that a motor vehicle caused his injuries. Counsel for MPIC submitted that the panel should consider all of the above as relevant in deciding that the Appellant was not credible.

Counsel for MPIC referred to the December 2, 2015 Health Care Service (HCS) opinion, which referenced medical documentation that showed the Appellant had pre-existing chronic pain that affected his right shoulder, right hand and wrist, low back, left knee, ankle and shoulder. The opinion stated that based upon the minor vehicle damage, the collision probably did not result in a sufficient transfer of force to cause the Appellant's reported musculoskeletal injury. At best, the opinion emphasized that while it was possible the 2009 MVA caused a minor exacerbation of the Appellant's pre-existing chronic pain, it was not probable. Further, the HCS opinion stated that the Appellant had probably long since recovered from any minor exacerbation of pre-existing chronic pain.

Counsel for MPIC referred to the HCS opinion dated April 17, 2019 in which counsel requested an opinion about PIPP benefits for the Appellant's knees, left hip, left ankle, left shoulder rotator cuff, right pinky finger fracture, and enlarged heart. The opinion

stated that there was no medically probable cause and effect relationship between the MVA and the Appellant's bilateral knee, left shoulder, hip and ankle pain.

The opinion stated that there was no medically probable cause and effect relationship between the MVA and the Appellant's right pinky-finger fracture and in fact, medical documents suggested the fracture resulted from the 1991 workplace accident.

Finally, the opinion stated that there was no medically probable cause and effect relationship between the MVA and the Appellant's enlarged heart. In fact, the opinion stated that it was "highly improbable" that the MVA or related interventions would cause an enlarged heart.

Counsel for MPIC reviewed various medical reports from the Appellant's physicians. He submitted that [Appellant's physician #2]'s report said the Appellant only complained of left shoulder pain as of February 26, 2017. The Appellant had also reported left shoulder pain prior to the MVA.

In relation to the Appellant's right finger fracture, counsel for MPIC referred to [Appellant's physician #3]'s letter dated July 23, 2020, which he provided to WCB in support of the Appellant's WCB appeal. The letter opined as follows:

> In my opinion, on the balance of probabilities, [the Appellant] suffered fracture of his right 5th metacarpal related to his initial work related injury leading to development of complex regional pain syndrome.

MPIC submitted that this opinion is preferable to [orthopaedic specialist]'s comment that simply recounted what the Appellant told [orthopaedic specialist] – that he fractured his finger in the MVA. The Appellant did not report a right hand injury at the time of the MVA and further, the Appellant admitted the workplace accident could have caused the hand injury. Therefore, counsel for MPIC submitted that, on balance, it was more probable the hand injury occurred during the workplace accident and not the MVA.

Counsel for MPIC submitted that the Appellant did not report a right ankle injury at the time of the MVA, as evidenced in the [hospital], physiotherapy and initial physician's reports. Further, there is some evidence that the Appellant injured his left ankle during his bike accident in 1991. Therefore, on balance, it was not probable that the MVA caused the ankle injury.

Counsel for MPIC referred to [chiropractor]'s chiropractic assessment, which stated as follows:

> On a balance of medical probability, [the Appellant's] current neck, right shoulder/hand and knee complaints and conditions do not relate to the motor vehicle accident of February 5, 2009. Aside from a fracture of the right fifth finger of uncertain age, there are no examination or imaging signs identifying ongoing injury implicating the rear end collision. There is information in the file of overlapping work related symptoms and injuries that have never resolved after their onset in 1991. Findings were ubiquitous and commensurate to [the Appellant's] age and relative inactivity. The findings do not support an aggravation of any prior conditions stemming from the motor vehicle accident. [The Appellant] vocalized a premise that multiple imaging findings, which may be normal variants or age related, as well as aggravations of prior conditions must necessarily follow a motor vehicle trauma. This is a premise of *post hoc ergo propter hoc* [i.e. 'because an event occurred first, it must have caused this later event'] and fails a threshold required for establishing medical causality.

Counsel for MPIC submitted that there is no evidence that the MVA caused an enlarged heart and further, the entirety of the medical evidence, at best, supported a minor exacerbation of the Appellant's pre-existing chronic pain condition, which should have resolved.

Counsel for MPIC referred to the HCS dental opinion dated April 30, 2019, which addressed whether the MVA caused damage to Tooth #18, and whether MPIC should pay an additional Permanent Impairment (PI) award to the Appellant for his TMJ and teeth. The opinion stated that although Tooth #18 may require treatment, the medical

documentation did not establish causation between the MVA and the treatment, either clinically or chronologically.

On the issue of whether MPIC should pay a further PI award, counsel referred to the opinion, which stated that there was no objective medical or dental information that supported any prior PI award for the Appellant's jaw. Further, the opinion stated that there was no medical or dental information that supported an additional PI award for any of the Appellant's teeth.

Counsel for MPIC referred to the HCS dental opinion dated June 30, 2019 which concluded that the TMJ measurements provided by [dentist #2] were so inconsistent with previous documents that they were not reliable. The opinion reiterated that the MVA probably did not cause the TMJ issue. Counsel for MPIC confirmed that MPIC did not seek reimbursement of prior awards, but would not fund further PIPP for the TMJ complaint.

Counsel for MPIC concluded with a quote from [Appellant's physician #2]'s report, which stated in part, as follows:

> … I did not see this patient until 14 month [sic] after the car accident, so I do not have my own documentation of injuries that the patient might have suffered immediately after the accident. I do have documentation dated 1991 of a low back injury. Also, I have x-ray reports from 1994 that noted a minor degree of medial joint space narrowing in the left knee. X-rays on the cervical, thoracic and lumbar spine from 1994 were normal. MRI at that time of the cervical spine revealed mild C56 degenerative disc narrowing.
>
> Since the accident 9 years ago, the patient complained of ongoing knee pains, neck and back pain. It would appear that there might be some temporal relationship in the aggravation of these pains to the 2009 accident. Those pains have been quite prolonged. This could be explained by imaging that indicated degenerative processes. It is beyond my expertise to suggest whether-or-not the accident aggravated or accelerated the underlying degenerative processes.
>
> Over the years, the patient also have [sic] complained of pains in the ankles and left shoulder. The patient relates these pains to the 2009

> accident. It is unclear to me specifically when these symptoms became significant, but there seem [sic] to be a delay of several years. I cannot explain this nor can I offer an opinion on the causation of these pains as they relate to the accident.

Counsel for MPIC submitted that based upon the totality of the medical information, the fact that the vehicle sustained minor paint damage, and the medical opinions against causation, the panel should uphold the IRDs and dismiss the Appellant's appeals.

Legislation:

The relevant sections of the MPIC Act are as follows:

> **Definitions**
> **70(1)** In this Part,
> **"bodily injury caused by an automobile"** means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused
>
> (a) by the autonomous act of an animal that is part of the load, or
> (b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile;
>
> **Lump sum indemnity for permanent impairment**
> **127(1)** Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than $500 and not more than $100,000 for the permanent impairment.
>
> **Reimbursement of victim for various expenses**
> **136(1)** Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:
> (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
>
> **Regulation 40/94**
> **Medical or paramedical care**
> **5** Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for

> the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:
>
> (a) when care is medically required and is dispensed in the province by a physician, nurse practitioner, clinical assistant, physician assistant, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician, nurse practitioner, clinical assistant, or physician assistant;

Credibility and Reliability:

The panel weighed all of the evidence to decide whether the Appellant had proved that it was more probable than not that, the MVA caused his current medical complaints. The panel considered several factors in making our assessment about credibility and reliability. These factors involved the Appellant's demeanor, the Appellant's recollection of events and the consistency with which the Appellant recounted events over time.

Counsel for MPIC questioned the Appellant's credibility. Counsel referred to the prior court decision that did not find the Appellant truthful. Counsel submitted that the Appellant exaggerated and provided inconsistent statements, which he did not adequately explain.

The panel agreed that the Appellant provided inconsistent statements, including inconsistent testimony about the MVA itself, which did not match prior statements he made to MPIC. In particular, he testified someone at the scene called police and so he "waited a long time" for them to arrive. The police apparently arrived at his home later that day. His March 9, 2009 signed statement stated that police and paramedics did not attend the scene; however, his July 16, 2009 signed Application for Compensation indicated that the police did attend the scene.

The Appellant also checked the Application boxes stating that he attended, and a doctor admitted him, to [hospital]. [Chiropractor] recorded that the Appellant's "wife and brother arrived at the scene [and] took him to [hospital] Urgent Care where he was evaluated and

released". This is inconsistent with his testimony that his pain overnight caused him to go to [hospital] the next day.

The Appellant testified that the collision paralyzed his legs so he could not exit his vehicle, while his MPIC statement of March 5, 2009 said he exited his vehicle to speak to the other driver. The Appellant told [chiropractor] "he remained seated in his van and the other motorist approached."

The Appellant's statements about the mechanics of his jaw and teeth injury were inconsistent, at one time saying his jaw and head hit the steering wheel and at another, saying his teeth hit the steering wheel. The panel noted that the Appellant had never before reported the blood and foam coming from his mouth, a symptom of his injury that the Appellant likely would have remembered and reported at the time of the MVA.

The Appellant's testimony about his ankle hitting the brake was inconsistent with his later statement that his ankle hit the floor beside the brake. The Appellant testified that his knees hit the steering wheel, but [chiropractor] recorded that the Appellant said his "right knee hit the dashboard". The [hospital] record documents tenderness and bruise to the left knee.

The Appellant testified that he told the [hospital] doctor and nurse "about my left shoulder which hurt because my hands hit the dashboard" yet the hospital record does not mention any injury to either shoulder.

The panel found that the Appellant occasionally responded defensively and did not adequately explain inconsistencies between the material and his testimony. In particular, when cross-examined, the Appellant initially denied that [emergency room physician] examined his knees, but then stated that [emergency room physician] told him that his injury was "mainly on his left side and knee". The Appellant tended to avoid the questions about inconsistent statements and reverted to negative remarks about doctors whose

reports he disagreed with, variously complaining that they were “not nice”, “old”, or “wrong”, thereby implying that the medical reports were not reliable or correct.

The Appellant tended to downplay his pre-existing injuries and pain complaints, and overstate his current complaints. For example, he testified that his only problem before the MVA was his right shoulder, and before the MVA “all of [his] teeth were in order”, but now all of his teeth are damaged, fractured or sensitive because of the MVA.

While the panel recognized that memory fades with time and the Appellant will not have perfect recall of events, this did not explain his many inconsistent statements, which tended to bolster his claim. The panel noted that the Appellant appeared to understand the proceedings, he did not ask for clarification, and displayed no difficulty speaking or responding quickly to questions. He had detailed knowledge of his documents and was assisted by his brother who is also university educated.

The panel made note of, but placed little weight on, the 23-year-old court finding about the Appellant’s credibility. Nonetheless, considering the above exaggerations, inconsistencies and lack of reasonable explanation, the panel found that the Appellant’s testimony was unreliable. Therefore, the panel relied primarily on the objective findings and opinions in the Appellant’s medical records, as well as the MPIC HCS opinions. The panel accepted the Appellant’s testimony that he suffers prolonged pain to many areas of his body. The question is whether the Appellant has proven, on a balance of probabilities, that the 2009 MVA caused his various pain complaints, and whether the evidence supported additional PI awards.

Discussion and Findings:

Pre-existing condition

In the Appellant’s July 16, 2009 Application for Compensation, he admitted he suffered a workplace injury, which caused a chronic pain syndrome. In 1994, CPP Disability accepted the Appellant’s chronic pain condition, which qualified him for his ongoing CPP Disability pension. The November 12, 2003 letter from [psychologist] referred to

[Appellant's physician #2]'s findings of "mild degenerative disc disease." [Psychologist] concluded that, "[The Appellant] has been disabled for 12 years since 2 accidents in 1991. He experiences considerable physically [sic] disability…" The July 23, 2010 letter from [Appellant's physician #3] documented that the Appellant suffered a work injury on March 14, 1991 that caused his complex regional pain syndrome from which he had not recovered. There is ample evidence in the Appellant's file of his pre-existing conditions. We find the Appellant suffered from a diagnosed pre-existing complex regional pain syndrome at the time of his 2009 MVA.

February 5, 2009 MVA

The Appellant's representative emphasized that the MVA was not the Appellant's fault and implied that therefore the Commission should determine a fairer amount of compensation for his suffering. To be clear, compensation under the MPIC Act is not fault based. This means that the MPIC insurance scheme guarantees compensation for all injured Manitobans, regardless of who was at fault for the accident, subject to valid insurance policy coverage. For Manitobans, the level of available PIPP benefits is not reduced or dependent upon the degree of fault for the accident. In addition, 'general damages' for pain and suffering are not part of the PIPP benefit scheme. The MPIC Act and Regulations are the sole source for determining the amount of PIPP benefits.

The panel recognized that the MVA was not the Appellant's fault keeping in mind that fault is not relevant for determining PIPP benefits. The panel relied upon the Appellant's March 5, 2009 statement as well as his testimony to find that another driver hit the rear-right corner of the Appellant's vehicle, which caused minor paint damage to the bumper. The Appellant was wearing his seat belt.

Right pinky finger fracture

The panel finds that the 2009 MVA did not cause the right pinky fracture. The Appellant did not describe any mechanism by which the MVA could have caused this fracture. He did not report this injury to health care providers within days of the MVA. The Appellant is right handed and it is unlikely that he would not have experienced and reported pain in

his dominant hand if the MVA caused the fracture. Simply because an x-ray 14 months after the MVA showed the fracture, does not mean that the MVA caused the fracture.

[Appellant's physician #3]'s July 23, 2010 report to the Workers Compensation Board (WCB) is quite clear that the 1991 workplace injury caused the Appellant's right-handed, fifth metacarpal (pinky finger) fracture. [Orthopaedic specialist] in his September 21, 2010 letter to the WCB described the Appellant's right hand fracture as "well healed" and he did "not know why he is symptomatic with his right hand". The panel noted [orthopaedic specialist]'s subsequent statement in his May 13, 2015 letter to [Appellant's primary medical doctor] (that the Appellant fractured his finger at the time of the MVA) but given [orthopaedic specialist]'s apparent inconsistent position, we preferred the opinion of [Appellant's physician #3].

The panel also considered [Appellant's physician]'s opinion to the WCB that the Appellant's 1991 workplace injury caused his chronic pain syndrome and shoulder-hand syndrome, and [Appellant's physician #2]'s summary dated April 10, 2018, which does not refer at all to right hand complaints.
The panel accepted the HCS opinion dated April 17, 2019 and finds that there is no medically probable cause and effect relationship, between the 2009 MVA and the right fifth metacarpal fracture.

Bilateral knee pain

The panel finds that the MVA did not cause the Appellant's ongoing bilateral knee pain. The panel considered the medical reports documenting knee pain prior to the MVA, as well as the Appellant's written statement (Application for Compensation) that he injured his left knee in his 1991 bike accident. The panel considered the [hospital] Urgent Care record that diagnosed the Appellant with "contusions to the chest and left knee". The Appellant did not complain of right knee pain. We find that the MVA probably caused his left knee contusion (bruise), which [emergency room physician] believed had an excellent chance of completely healing, within 2 weeks.

The later reports by the Appellant's doctor and physiotherapist, some five to six days after the MVA, document symptoms involving both knees. The physiotherapist noted the Appellant's "hypersensitivity" related to his knee (and now hip) complaints, and diagnosed "multiple trauma", which included "bilateral knees." The physiotherapist estimated that clinical care would last 5-6 weeks. Similarly, the Appellant's doctor noted symptoms that included left and right knee pain, but also recorded no abrasions or contusions. He diagnosed a whiplash disorder.

The panel accepted [chiropractor]'s opinion that no examination or imaging records demonstrate a link between the MVA and the Appellant's prolonged, bilateral knee injury. The panel considered and accepted [chiropractor]'s observations of the Appellant walking by the office window without the limp previously demonstrated in the office. [Chiropractor] remarked on the increased freedom of movement and concluded that the Appellant's pain and disability reports were unreliable.

The panel also accepted [Appellant's physician #2]s comments that in June and July 2011 he examined the Appellant for "multiple joint pains" and his right knee x-ray showed osteophytes and joint narrowing consistent with mild osteoarthritis. He further stated that while there might be some temporal relationship that connected the MVA to an aggravation of the Appellant's pain, his degenerative processes could explain his prolonged pain.

Finally, the panel accepted both HCS opinions, which stated that, at best, the minor MVA possibly resulted in a minor exacerbation of the Appellant's pre-existing chronic pain, and finds that there is no medically probable cause and effect relationship between the MVA and the Appellant's osteoarthritic knees.

Left shoulder

The panel finds that the MVA did not cause the Appellant's left shoulder rotator cuff issue. While the Appellant characterized his MVA injury as related to his entire left side, he did

not report a left shoulder complaint to [emergency room physician]. Six days after the MVA, the physiotherapist made a clinical diagnosis of “multiple trauma”, which did not include a left shoulder complaint. Although the Primary Health Care Report of his doctor indicated physical signs for both shoulders, the clinical diagnosis is WAD 2, and the Appellant’s July 16, 2009 MPIC Application for Compensation does not document any shoulder injury.

[Doctor] first treated the Appellant’s left shoulder pain complaint on February 26, 2017. An x-ray at that time showed “mild malalignment of the AC joint which likely relates to remote trauma.” He does not identify the trauma. Subsequent examinations and MRI revealed rotator cuff tears, tendinosis, bursitis, AC joint sprain and arthritis. [Doctor] could not pinpoint when the Appellant first complained about his left shoulder, but felt that there was a delay of several years between the 2009 MVA and the first complaint. He could not provide an opinion on causation.

The panel accepted the opinion of the HCS doctor and finds that there is no medically probable cause and effect relationship between the MVA and the Appellant’s left shoulder pathology.

Left hip

The panel finds that the MVA did not cause the Appellant’s prolonged hip pain. The panel finds that the Appellant’s description of the apparent mechanics of his hip injury during the MVA is unreliable. The Appellant was wearing his seat belt when the other driver struck the right rear corner of his vehicle. The panel finds it unlikely that the right rear-corner collision, which simply resulted in paint scrapes on the bumper, created enough force to bounce a seat belted driver up and down in his seat, as the Appellant described. Further, he did not complain of hip pain at [hospital] Urgent Care. Although the physiotherapist documented the Appellant’s “hypersensitivity” and pain when he palpated his hips, the Appellant’s doctor did not report any hip pain symptoms. The Appellant did not report hip pain to [chiropractor].

[Doctor] first documented the Appellant's complaint of low back pain that radiated to his left hip in July 2016. X-rays of the Appellant's lumbosacral spine showed osteoarthritic changes with lumbar and sacroiliac disc narrowing. [Doctor] did not specifically opine what caused the Appellant's left hip pain. The panel accepted the HCS opinion and finds that there is no medically probable cause and effect relationship between the MVA and the reported hip complaints.

Left ankle

The panel finds that the MVA did not cause the Appellant's prolonged left ankle pain. The panel finds the Appellant's description of the apparent mechanics of his ankle injury to be unreliable based upon his inconsistent statements about how the injury occurred. The Appellant did not report any ankle injury to [emergency room physician] ([hospital]), his physiotherapist, or his doctor in the initial examinations.

[Doctor] first documented the Appellant's left ankle complaints on September 22, 2014, with additional complaints throughout 2015 and into July 2016. Again, [doctor] could not state that the MVA caused the left ankle pain because the complaints arose several years after the MVA.

The panel accepted the HCS opinion and finds that there is no medically probable cause and effect relationship between the MVA and the Appellant's left ankle (or right ankle) pain complaints.

Enlarged heart

The panel finds that the MVA did not cause the Appellant's enlarged heart. The Appellant linked his enlarged heart to the MVA for the simple reason that an x-ray taken at the [hospital] Urgent Care on the day after the MVA revealed an enlarged heart, and the doctor noted a systolic murmur.

The panel accepted the HCS opinion and finds that it is highly improbable the MVA, or any interventions for managing any MVA related injury, caused the Appellant's enlarged heart.

Chiropractic treatment

The panel finds that the 2009 MVA does not warrant additional chiropractic treatment for the Appellant. [Chiropractor] outlined the Appellant's treatment, which the Appellant did not challenge. MPIC paid for chiropractic treatment under Track 1 and approved Track 2 chiropractic care. The Appellant discontinued the Track 2 chiropractic care early apparently because the travel distance was inconvenient. The Appellant did not request chiropractic care again until 12 months later.

[Chiropractor] concluded that the Appellant's reported complaints of neck pain, right shoulder/hand and knee complaints did not relate to the 2009 MVA. He noted that there are no examination or imaging signs identifying or implicating the MVA with an ongoing injury. [Chiropractor] also concluded that there was no evidence that the MVA aggravated prior conditions. He noted that the Appellant had not improved (responded) to his prior course of physiotherapy and chiropractic treatments. Therefore, in relation to the 2009 MVA, further chiropractic treatment was not medically necessary.

The panel accepted the conclusion of [chiropractor] and finds that the Appellant is not entitled to further chiropractic treatments.

Additional PI for TMJ

The panel finds that there is no evidence that warrants an increase in the TMJ PI award already paid by MPIC. The Appellant submitted that the panel should accept the May 1, 2019 measurements of [dentist #2], which reported, "right lateral- 0 mm", "left lateral- 1 mm", and "protrusive- 0 mm".

The panel agreed with the HCS dental opinion about these measurements, which stated as follows:

> The recent range of motion measurements, although incomplete, represent such a severe degree of limitation that it would unlikely have gone unreported and unnoticed in previous exams. These measurements are out of any reasonable expectation for the described TMJ condition and do not match the records on file. These measurements are not medically probable as they would amount to a description where the claimant would be unable to feed himself. Therefore there is currently no known mechanism or medical probable cause that could explain or account for a relation between the reported range of motion measurements and a jaw (TMJ) condition resulting from the MVA of 2009.

The opinion pointed out that prior measurements provided by the same dentist showed improvement and a jaw range of motion within normal limits. The opinion concluded that the May 1, 2019 measurements did not logically flow from the reported condition or any medically probable cause, including the 2009 MVA.

The panel accepted this opinion and finds that MPIC properly calculated the Appellant's TMJ award based upon [dentist #2]'s prior measurements and there is no reliable evidence upon which to base an increased award.

Additional PI for Teeth #16 & 27

The Appellant provided no additional medical evidence or opinions to support his position that he should receive an increased PI award for his teeth. He admitted that he agreed with the figures and percentages used by MPIC for its calculation. He submitted that the current award was too low and MPIC should pay a fairer amount.

The panel finds that MPIC properly calculated the Appellant's PI award for the extraction of Tooth #16 and the alteration of Tooth #27.

Tooth #18

The panel finds that the Appellant has not proved, on a balance of probabilities, that the MVA caused damage to Tooth #18. There is conflicting medical evidence as to whether Tooth #18 is in fact cracked. Further, none of the Appellant's dentists or specialists confirmed that the MVA caused the problems with Tooth #18.

The HCS opinion dated April 30, 2019 pointed out, and the panel finds, that the Appellant did not report damage to tooth #18 in the initial dental reports and no dental reports mention trauma to tooth #18 caused by the MVA. The Appellant first requested treatment in about September 12, 2015 (five years post-MVA). The HCS dental specialist concluded that both clinically and chronologically, the MVA did not relate to any treatment for Tooth #18.

The panel accepted this opinion and finds on a balance or probabilities that there is no cause and effect relationship between the MVA and any required treatment for Tooth #18.

Disposition

The panel finds that the Appellant has not proven any of his claims on a balance of probabilities. The panel therefore dismisses all of the Appellant's appeals and confirms the IRDs dated February 24, 2012; December 4, 2015; March 6, 2017 of prolonged bodily pains; March 24, 2014 chiro; November 16, 2015 tooth#18; November 19, 2013 PI benefit for teeth 16 & 27 and TMJ.

Dated at Winnipeg this 16th day of April, 2021.

PAMELA REILLY

SHARON MACDONALD

LORNA TURNBULL