Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File Nos.: AC-15-246, AC-18-102

PANEL:	**Laura Diamond, Chairperson** **Janet Frohlich** **Sandra Oakley**
APPEARANCES:	**The Appellant, [text deleted], was represented by [Appellant's father];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Matthew Maslanka.**
HEARING DATE:	**September 23, 2021; September 24, 2021; September 27, 2021; September 28, 2021**
ISSUE(S):	**Whether the Appellant is entitled to Personal Injury Protection Plan (PIPP) benefits for his back (including pelvis and hip) symptoms.** **Whether the Appellant is entitled to PIPP benefits for his current cognitive function and psychological status.**
RELEVANT SECTIONS:	**Section 70(1), 136 (1) and 150 of The Manitoba Public Insurance Corporation Act (the Act) and Section 5 of Manitoba Regulation 40/94.**

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

Reasons For Decision

Background

The Appellant was injured in a motor vehicle accident (MVA) on August 2, 2010 while operating an all-terrain vehicle (ATV). He crossed a highway and collided with a semi-tractor unit and trailer which had the right-of-way. The Appellant suffered injuries and was transported to the [hospital] by ambulance. Following examination and investigation, he was treated for a laceration to his right leg and sent home.

The Appellant continued to suffer from his injuries and sought treatment from his family doctor, [text deleted], who referred him to a surgeon to address a recurring wound infection on his leg. In November 2010, the surgeon operated on his leg to remove fragments of foreign material from the MVA.

Back Condition

The Appellant also complained of pain in his back, hip and pelvis. He left school, but was working for [text deleted] company between June or July 2011 until February 2012. He then started working for a food company in June 2012.

While working at [text deleted], the Appellant complained of a flare up of back symptoms in about October 2011. He missed time from work and filed a disability claim with their insurer, [insurance agency] in 2012. He also filed a Workers Compensation Board (WCB) claim.

The Appellant sought treatment from his family doctor, a physiotherapist and [text deleted] and [text deleted].

The Appellant then filed an Application for Compensation with MPIC dated September 20, 2012 reporting the following injuries:

- Gash to the right shin - requiring stitches
- Knocked unconscious - having memory problems, anger
- Back pain mid-low back and scarring to both hips, hands, back

He indicated that he had filed a WCB claim but that WCB had told him that the back problems were an exacerbation of pre-existing injuries.

The MPIC case manager obtained medical information as well as claim file information from [insurance agency] and WCB. The case manager then referred the matter to MPIC's Health Care Services (HCS) team for an opinion on the cause and effect relationship between his reported back condition and the MVA. The medical consultant opined that the information did not support a cause and effect relationship between the MVA and back symptoms reported in December 2011.

This opinion was based upon the lack of documentation showing that the Appellant had complained to his caregivers of back symptoms after the MVA and prior to December 2011. The lack of evidence showing a traumatic injury to his back following the MVA was also considered, as well as the common occurrence of such back symptoms in the general population.

Based upon this review the case manager concluded that a cause and effect relationship could not be established between the MVA and the Appellant's back symptoms/condition. Therefore the case manager determined that there was no entitlement to Personal Injury Protection Plan (PIPP) benefits regarding his back condition.

The Appellant sought an internal review from this decision.

Cognitive Status and Psychological Condition

The Appellant also sought PIPP benefits for psychological injuries arising out of the MVA. In particular, he experienced symptoms of a cognitive or neuropsychological nature and sought treatment from his family doctor, and neurologist [text deleted].

His file was reviewed by MPIC's Traumatic Brain Injury (TBI) consultant with MPIC's HCS team who recommended that he be referred for a full neuropsychological assessment.

On December 13, 2017 a neuropsychological report was provided by [text deleted], a neuropsychologist in [Province], where the Appellant was living. [Neuropsychologist] provided a diagnosis of "mild neurocognitive disorder due to multiple etiologies (e.g., TBI, mood, chronic pain), with more significant difficulties processing visual than verbal information". She also diagnosed a major depressive disorder based on the psychological symptoms he reported as well as noting ongoing difficulties related to post-traumatic stress. She indicated that the psychological difficulties may account for or exacerbate some of his cognitive difficulties.

[Neuropsychologist] made various recommendations for treatment of these conditions.

The file was referred to the MPIC HCS neuropsychological consultant who reviewed [neuropsychologist]'s report and noted [neuropsychologist]'s acknowledgement that it was difficult to say if the Appellant's condition represented new deficits related to brain injury sustained as a result of the MVA or exacerbation of previous areas of weakness. The consultant was not of the view that the deficits were in keeping with the longer-term sequelae of even a moderate TBI, let alone a mild injury such as had been sustained by the Appellant.

Since [neuropsychologist] had noted that reviewing the Appellant's educational records might assist in determining his pre-MVA cognitive and psychological status, these educational records were obtained and were reviewed by [neuropsychologist]. She noted that the records suggested that the Appellant was functioning well academically pre-injury and there was no suggestion that he needed any special assistance in the school setting. This was consistent with her interviews with the Appellant and his parents and suggested that his cognitive abilities were intact pre-accident.

This second report was then reviewed by the MPIC HCS neuropsychological consultant who did not agree that the Appellant's deficits were caused by the MVA. She indicated that educational records notwithstanding, her opinion remained that it was difficult to determine the etiology of the Appellant's current cognitive and psychological status, given that the assessment with [neuropsychologist] occurred over seven years post-injury. She also identified weaknesses in [neuropsychologist]'s conclusions. In her view it could at best be said that it was *possible* that the Appellant's current cognitive and psychological difficulties are related to the MVA in question but the medical evidence did not suggest probability.

The case manager, relying upon this opinion, issued a decision stating that a cause and effect relationship could not be established between the MVA and the Appellant's cognitive function or current psychological status. Therefore, there was no entitlement to benefits under PIPP regarding his cognitive function or psychological status.

The Appellant sought internal review from this decision.

Internal Review Decisions

Back Condition

An Internal Review Officer (IRO) for MPIC reviewed the case manager's decision denying a causal relationship between the Appellant's back, hip and pelvis symptoms and the MVA. They noted that the timing of the back injury was consistent with information he provided to [insurance agency], advising that his back problems started at work. There was no medical documentation of any complaints of back pain until December 2011, over 16 months after the MVA. The IRO found that the probable cause of the Appellant's current back symptoms was related to a workplace injury and not the MVA.

Cognitive Status and Psychological Condition

An IRO also reviewed the case manager's decision denying a causal connection between the Appellant's psychological condition and cognitive deficits and the MVA. The IRO noted the neuropsychological consultant's conclusion that it would be difficult to determine the etiology of his psychological condition given the assessment conducted seven years post-injury. The medical evidence suggested there might be a possible connection but did not, on the balance of probabilities, suggest probability.

The IRO upheld the case manager's decision that the Appellant's current cognitive function and neurological deficits were not causally related to the MVA.

It is from these Internal Review Decisions (IRD) that the Appellant has now appealed.

Issues

The issues before the panel were:

- Whether the Appellant's back, hip and pelvis symptoms were caused by the MVA; and
- Whether the Appellant's cognitive function and psychological status were a result of the MVA, thereby entitling him to further PIPP benefits.

Duty Pursuant to s. 150 of the Act

During the case management process, the Appellant raised allegations of improprieties arguing that MPIC had failed to meet its obligations under s. 150 of the Act. The Appellant asked that a number of documents related to these allegations be included in the documentary evidence before the appeal panel.

> **Corporation to advise and assist claimants**
> 150 The corporation shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the compensation to which they are entitled under this Part.

It was explained to the parties that allegations under s. 150 are not a separate issue on appeal. Rather, s. 150 can be considered in connection with an issue on appeal if any failure by MPIC to act in accordance with this duty is found to affect an appellant's entitlements to benefits or compensation. There must be a nexus between any alleged failures and the entitlement or compensation claim.

Further, the parties were advised that the Commission does not have jurisdiction to consider whether MPIC acted in bad faith in the process before the Court of Queen's Bench as explained below. It is for the Court to make such determinations.

For ease of reference at the hearing in regard to these arguments, the Commission compiled a separate binder of documents which the Appellant wished to include to support allegations of MPIC misconduct.

However, the parties were reminded that the allegations of misconduct were not a separate issue on appeal.

Disposition

Following our review of the evidence, including the documentary evidence on file and testimony of the witnesses, as well as the submissions of the parties, the panel finds that the Appellant has failed to show, on a balance of probabilities, that his back, pelvis and hip symptoms are causally related to the MVA.

However, we find that the Appellant has met the onus upon him to show, on a balance of probabilities, that his cognitive and psychological difficulties are causally related to the MVA and that he is entitled to further PIPP benefits from MPIC to address these cognitive and psychological injuries and effects.

Pre-Hearing Matters

Following the MVA, the Appellant was also named as a defendant in a civil litigation action, whereby MPIC sought to recover property damages from the minor Appellant for the vehicular damage caused by the MVA. Settlement discussions were also undertaken in regard to this action, as well as Case Conferences in the Court of Queen’s Bench. Although it did not come to

pass, some discussion may have been had regarding the possibility of offsetting such amounts claimed against any PIPP benefits to which the Appellant may be entitled.

While the civil litigation was ultimately resolved, it is fair to say that the process caused a great deal of resentment on the part of the Appellant and his parents towards MPIC and some of its employees.

A number of case conferences were held by the Commission with the parties to case manage this appeal and prepare the matter for hearing. While the Appellant and his parents wished to incorporate and pursue the civil litigation issues, the case conference process emphasized and concluded that the Commission did not have jurisdiction over these complaints. With the possible exception of certain aspects of s. 150 of the Act (as discussed above) the issues on appeal were limited to the Appellant's entitlement to PIPP benefits.

The Hearing

As a result of Covid-19, and the fact that the Appellant and his parents now live in [Province], the parties agreed that the hearing would take place by teleconference.

The Appellant was represented at the hearing by his father.

Evidence was heard, first from the Appellant's father and then from his mother (who was excluded during her husband's testimony).

The Appellant did not attend. He did not call in to the teleconference to give his evidence at the time scheduled for his testimony, or at all. His father advised that although it had been anticipated when the hearings dates were booked that the Appellant would participate, he was too busy working on those days to attend.

Evidence was also heard from MPIC's HCS medical consultant, [text deleted] and from its neuropsychological consultant, [text deleted].

Preliminary Matters

During the pre-hearing case conference process, the Appellant's father asked the Commission to issue subpoenas for the case manager, [text deleted] and counsel for MPIC in the civil court case [text deleted]. After reviewing written submissions by the parties, this request was denied by the Deputy Chief Commissioner (DCC) who chaired the case conferences. The DCC determined that it was not established or explained how such testimony would assist the panel in determining the causation issue, and in turn, the Appellant's entitlement to PIPP benefits for his back and cognitive difficulties, which is largely determined by medical and psychological evidence.

At the outset of the appeal hearing, the Appellant's representative (his father) renewed his request for subpoenas for [case manager] and [counsel for MPIC]. Counsel for MPIC opposed this request. Both parties again made submissions to the panel in support of their positions.

The Appellant's representative submitted that the case manager had opened a previous PIPP claim which, along with a lot of supporting documentation, was missing. This documentation was important to support the Appellant's claim that he had complained to [family doctor] about his back symptoms many times before December 2011. Both the case manager and litigation

counsel would be important witnesses to fill in these gaps and to address the Appellant's concerns regarding MPIC's failure to assist the Appellant pursuant to s. 150 of the Act.

Counsel for MPIC submitted that there was no evidence that there were any missing documents. MPIC had provided all relevant medical documentation, including patient purge records from Manitoba Health.

There was nothing to suggest that oral evidence from the case manager or litigation counsel would be of any assistance in determining the issue of causation, which is the substantive issue before the panel in this appeal.

After adjourning to consider these submissions, the panel reminded the parties that s. 150 of the Act does not form a separate issue on appeal. It only comes into play if the panel finds, through its analysis of the evidence, that a failure by MPIC to fulfill its duty affected the Appellant's entitlement to benefits. We do not have jurisdiction to consider whether the actions of MPIC in the vehicular damage litigation process were improper. That is for the Court to determine, and not the Commission.

The issue before the Commission is to determine causation of the Appellant's injuries and whether they are related to the MVA, entitling him to PIPP benefits. For this, the Commission relies heavily upon medical and psychological information on the file, the testimony of appellants regarding their symptoms, history and experience, and the testimony of expert witnesses. In this case the Commission has, as part of the documentary evidence before it, the clinical notes from [family doctor] and his clinic from August 30, 2010 to January 4, 2013, as well as numerous reports from him. The evidence also includes an MHSC patient purge which

documents all medical visits made by the Appellant between August 30, 2010 and October 19, 2012.

Therefore, the panel concluded that testimony from the case manager and litigation counsel would not assist and subpoenas would not be issued for the requested witnesses.

The hearing continued with the testimony of the Appellant's parents and the HCS consultants for MPIC.

Evidence

Evidence for the Appellant

Documentary Evidence

Although the documents on the file included early reports and clinical notes from the Appellant's family practice clinic, they did not contain a record of the Appellant reporting back symptoms until December 2011. The Appellant maintained that this was because certain records were missing and had not been provided by the clinic or by MPIC when requested.

The Appellant relied upon other documents in the file from physiotherapy, the family practice clinic, [insurance agency], WCB and specialists such as [text deleted], and [neurologist], which referred to the MVA in discussions regarding his back condition. These specialist reports, along with a report from the neuropsychologist, [text deleted], and the Appellant's school records were relied upon in support of entitlement for his cognitive and psychological condition.

These documents included:

- A clinical note of his visit to [specialist #2] (at the Appellant's family practice clinic) dated December 21, 2011, stated:

> *Within the past 2 days his back has been getting sore. Has history of getting sore since quad accident, August 3rd 2010 (sic) with a semi on the highway. At the scene of accident hit driver side door, flipped over the hood of semi and landed on the highway. Was wearing a helmet. Now gets headaches, trouble sleeping.*
>
> *No numbness in feet, void normal, bowel movements normal, no saddle anesthesia.*
>
> *Last few days back is bothering him...*

- A report from [physiotherapy clinic] dated February 24, 2012 noted a history of:

> *Quad accident 2 yrs ago. Back fine until 4/12 [4 months]…*

This report went on to describe his shifts and work duties as a [text deleted].

- WCB Adjudicator notes dated June 29, 2012 followed a discussion with the treating physiotherapist. It described the physical challenges at the Appellant's employment and noted:

  - *She said [the Appellant] told her he had been in a quad accident a year or two prior to him seeing her and she believes the nature of his work caused an aggravation to his already present low back condition*
  - *She said she was not aware if he underwent any back treatment during recovery from his accident and she was not sure of the details of the accident or the extent of his physical injuries as a result*
  - *She said [the Appellant] complained of low back pain and said he reported it was due to his work*
  - *She said aside from the accident, she was unaware of any outside activities or possible trauma which may have contributed to this condition. …*

- An email to the Appellant's mother from WCB, dated July 12, 2012 indicated WCB had accepted limited responsibility for the claim, as his *"work duties aggravated [the Appellant]'s pre-existing back condition……"*

- A letter from [family doctor] dated July 24, 2012 indicated that the Appellant was first seen in walk-in by [specialist #2] on December 21, 2011:

  > *[The Appellant] had ongoing problems with lower back discomfort due to a quad accident where he struck the driver door of a semi truck and flipped over the hood landing on the road in Aug.3/10 (sic). He awoke with increased lower back pain. He was found to have muscular spasm in both paraspinal muscles…*

- A letter from [family doctor] to WCB dated August 1, 2012 repeated this information.

- A letter from [family doctor] to [specialist #2] dated August 8, 2012 noted that the Appellant was a [age] old male who was involved in a quad accident 2 years ago:

  > *… He has had lower back pains since off and on causing him to miss work. … Please see and advise…*

- A letter from [family doctor] to [specialist #3] dated September 20, 2012 repeated this information.

- [Specialist #3] reported on November 26, 2012 indicating that the Appellant relates his symptomatology to the MVA, and that he was slowly recovering form his severe contusion to the thoracolumbar junction of the spine. In the absence of a compression fracture, he may benefit from physiotherapy.

- The neurologist, [text deleted], reported on June 12, 2013. He described the MVA and indicated that since that time the Appellant had quite a lot of problems with memory and headaches and soreness to his back. In his assessment the Appellant has a post concussion syndrome with no particular neurologic problem.

- [Specialist #1] reported on October 11, 2016, advising that the Appellant had chronic left thoracolumbar musculoligamentous strain with mechanical low back pain. He had mild left thoracolumbar scoliosis with myofascial taut bands and trigger points of the iliocostalis lumborum and quadratus lumborum muscles. He also noted evidence of

concussion and indicated that *"on the basis of history, given by the patient, it is relevant to the motor vehicle accident injuries of August 2nd, 2010"*.

He also noted that there was no pre-existing or unrelated conditions which could be either causing or contributing to the complaints.

- A report from [family doctor] dated November 18, 2016 described the MVA and wound infection treatment, indicating that it *"was obvious he had a back injury because of the accident. There was no evidence of a back problem prior to the accident…"*

  He also noted the parents' report of memory problems and [neurologist]'s diagnosis of post concussion syndrome.

- MPIC's TBI consultant provided an opinion dated April 4, 2017. He reviewed [specialist #1] and [neurologist]'s reports and noted that the Appellant had been awarded a PI benefit entitlement for a minor cerebral concussion or contusion.

  He recommended that in view of the Appellant's report of memory problems, he should be referred for a full neuropsychological assessment, to look at in depth objective measures of his cognitive functioning, including, but not restricted to, his memory.

- On December 13, 2017 a report was provided by [text deleted], a Clinical Neuropsychologist. [Neuropsychologist] reviewed the Appellant's medical records, conducted neuropsychological testing and interviewed the Appellant and his parents. She noted several impairments in areas such as visual-spatial abilities, psychomotor speed, mathematical computation, sustained attention, memory for visual information, verbal and non-verbal reasoning and abstraction, planning and organizing of multi-step solutions and utilization of feedback.

  Her diagnoses included:

> *… a Mild Neurocognitive Disorder due to multiple etiologies (e.g., TBI, mood, chronic pain), with more significant difficulties processing visual than verbal information.*
> *… Of note, a diagnosis of Major Depressive Disorder is warranted based on the current profile of psychological symptoms he is reporting. Furthermore, he is suffering from ongoing difficulties related to post-traumatic stress*
> *… His psychological difficulties may well account for (or exacerbate) some of his cognitive difficulties….*

In regard to causation, [neuropsychologist] advised:

> *While chronic physical and psychological difficulties may be able to account for some of the difficulties identified through this assessment other aspects of [the Appellant]'s cognitive profile are less likely to be influenced by the secondary factors (e.g., difficulties with visual-spatial perception). That being said, it is difficult to say if these difficulties represent new deficits related to the brain injury that [the Appellant] sustained as a result of the accident, or exacerbation of previous areas of relative weakness.*

[Neuropsychologist] identified assistance the Appellant would require both in regard to his ability to work and for independent daily living.

> *… Thus, treatment and management of [the Appellant]'s psychological difficulties is warranted and, with alleviation of his psychological distress and pain, there is good prognosis for further improvement.…*

She went on to list 11 recommendations to assist the Appellant with such tasks including the use of different tools and strategies for processing information, psychological and psychiatric consultation/counselling, pain management techniques and participation in a chronic pain therapy group.

- After receiving and reviewing the Appellant's school records and report cards, [neuropsychologist] provided a brief additional report dated April 19, 2018:

> *School records reviewed suggest that [the Appellant] was functioning well academically pre-injury. There is no suggestion that he needed any special assistance in the school setting. This is fitting with what was reported by [the Appellant] and his parents during interviews, and suggest that his cognitive abilities were intact pre-accident. He was also*

> *reportedly physically healthy before his injury with no indication of any psychological disorder.*
>
> *Again, at the time of my direct evaluation, [the Appellant] met criteria for a Mild Neurocognitive Disorder due to multiple etiologies, including accident related traumatic brain injury, mood disorder (e.g. Major Depression and signs of traumatic stress) and chronic pain. Please refer to my report for details including recommendations for ongoing rehabilitation.…*

The Appellant's Father

The Appellant's father described the MVA of August 2, 2010 as a serious traffic accident. He advised that his son was found unconscious, not walking around. He was taken to [hospital] in [text deleted] with blunt force trauma. He received very little treatment at the hospital, where they were more concerned with getting him out of there. He described some support which the family had received from ambulance attendants at the hospital but described the overall experience as "horrific".

They saw the family doctor, [text deleted], a short while later, within the first week following the MVA and were also seen by [specialist #2] in the same office. The Appellant had a huge infection in his leg which was oozing pus. He also recalled discussing other problems such as his son's inability to stand up straight or walk right because of his hip. He had a head injury and was having problems remembering, sleeping and thinking. He couldn't even remember the MVA.

The family continued to see [family doctor], who took pages of notes which, the father noted, were not found in his clinical chart notes. This concerned the family because unfortunately the doctor lost all of these notes. He tried to treat the Appellant with a regimen of OxyContin, which they refused. He tried to deal with the leg wound by reopening it in his office but in the end

referred him to [surgeon] for surgery to have fragments removed. The Appellant was still having hip problems and issues with his head injury, but was working.

The father indicated that the Appellant had to leave school because he had a hard time, with his fractured hips, sitting in school in a chair for eight hours a day. He was having trouble sleeping. Both affected his attendance, and although he tried to return to school, he finally withdrew and went to work. Both of his employers were familiar to the family and accommodated the Appellant's limitations.

One of these employers suggested that he should go for physiotherapy treatment. The employer had an insurance plan with [insurance agency] which covered some of this cost, but at some point in the process the insurer was no longer willing to pay for something that was possibly a work accident and the Appellant had to go through WCB for further physiotherapy treatment. WCB concluded that his problems were from the MVA.

When the Appellant could no longer continue to work there, even on reduced duties, he got a different job as a [text deleted]. He had so much difficulty working with his lower back and hip pain that his family doctor recommended he quit his job and get a massage chair and special bed.

The father explained that the Appellant never had any such problems before the MVA and that he had played high level high school hockey, which he had to quit.

The Appellant saw [neurologist] and was diagnosed with post concussion syndrome four years after the MVA. He still was not working.

The family hired a lawyer to assist with MPIC's legal action against the Appellant in the courts regarding vehicle damage. MPIC's legal counsel in that case suggested that they open a PIPP claim, explaining that the Appellant could be entitled to some funding. They felt pressured to start a claim but went in and filled out the paperwork, explaining all the difficulties he was going through in regard to his head and hip injuries. Both PIPP claims were denied.

The Appellant went to see many different doctors upon referral from their family doctor. Some of these were very good and truthful but some were not. MPIC did not pay for any medication or physiotherapy although the Appellant still struggles. He moved to [Province] several years ago and has work, but still sometimes has a hard time getting up off the couch. It is very tough for him to do his job with his injuries and abilities.

The father described continuing cognitive problems. The Appellant has "zero memory" and quickly forgets things. He has problems with logic and figuring things out. He is in constant pain. He has problems with anger, sleeping and memory, needing frequent reminders to do important tasks such as paying rent. His demeanor has changed from an active teen who played hockey and was in a band. The parents have had concerns about suicidal thoughts and talked to the case manager and [family doctor] about this, pleading to get their son some help.

On cross-examination, the father explained that they had not wanted to involve MPIC with their son's health care, as they wanted to find better doctors and did not want MPIC controlling their son's health. This is why they did not initially open a PIPP claim, respond when the case manager reached out to them in letters, or provide requested medical authorizations when MPIC tried to investigate.

The father was asked about the Manitoba Health patient purges which did not show a visit to a health care provider between a visit to [surgeon] (who operated on the leg) on November 15, 2010 and to [specialist #2] on December 21, 2011. He said that this could very well be, as they had been told by their family doctor that the injury and body were going to take time to heal so they should sit back and let everything settle.

When asked about the family doctor's report of January 18, 2013 stating that he first became aware of the Appellant's back pain in December 2011, the father explained that this is why they have been trying to find the full notes. They had been pressuring the doctor to help with his hip and head injuries. The doctor said he felt uncomfortable with this pressure but the father could not account for what he put down in his notes or for the doctor throwing out all his documents. The father said that the doctor told [insurance agency] and WCB that the injuries are from the MVA, so he did not know why the doctor later contradicted himself.

The father denied telling the case manager (recorded in a file note from August 28, 2012) that the back pain started nine months after his son started work, indicating that the Appellant had been in pain all along and that it was his employer who recommended he go through [insurance agency].

When asked about a worker incident report to WCB of December 19, 2011 which indicated that symptoms first arose in December 2011, the father denied this, stating that his son was not able to walk because of aggravating a pre-existing injury. Although his son had reported that he occasionally had lower back pain (never really bad) when he was a [text deleted], the father said that was a totally separate thing from MPIC and no matter what his son had said, this was a pre-existing injury from the MVA. When asked why his son told WCB he had not seen a doctor

for similar symptoms, the father said that he had seen the family doctor for this and that the missing documents would show this.

The father was asked about a case manager's file note from a September 20, 2012 meeting with the Appellant and his parents, where the Appellant was noted to have said that he did not drop out of school because of MVA injuries but because school was not for him. The father said that was just the case manager's opinion and that it can't be proven as a fact that this was said.

The Appellant's Mother

The Appellant's mother described the day of the MVA. The parents were advised their son had been in an MVA and transported to hospital. She described their experience at the hospital, where their son was released without receiving proper care, and his condition while lying around at home in the days following.

Before the MVA he had been personable and outgoing, with lots of friends, and involved in hockey and band. After the MVA everything changed. He never laughs and won't talk about things. He is depressed and irritated, doesn't go out or see friends, and has memory problems which require his parents' assistance.

The mother noticed these changes and psychological differences right after the MVA, as their son would just lay around. He was not the same kid; he was a totally different child. They worried about suicide and talked to the family doctor about their concerns, but the doctor's solution was to put him on drugs.

She also noticed physical differences such as walking lop-sided with one leg shorter than the other. She could hear his hip clicking and he complained of pain, spending a lot of time in his massage chair and on the couch.

On cross-examination, the mother confirmed that after the MVA on August 2, 2010, they did not take him to see the doctor immediately, waiting until August 30, 2010. She explained that this was because he had fractured hips that they were not aware of at the time and he was not able to physically get up.

She did not recall asking the family doctor to provide a note allowing the Appellant to play hockey that fall, although [family doctor] provided a note dated September 14, 2010 certifying his ability to play hockey. She said that this was likely just for try-outs because in the end there was no hockey team fielded by his high school that year.

The mother could not say why there was no record of doctor visits between the November 15, 2010 visit to [surgeon] and the December 21, 2011 visit to [specialist #2], although she admitted that based upon the medical records in the file it was possible there had been no visits in between.

She was asked several questions about the [insurance agency] log of a telephone call she had with the Appellant's disability case manager on April 16, 2012 which indicated she told the case manager that her son had no problems with his back prior to working and after his MVA he was fine, had no problems, did normal things, finished school and went and got a job. The mother said this statement was not correct. She never said he had no back problems because he had daily back problems. She would not say he finished school when we all know he did not finish school.

This was ridiculous, as he was removed from school for bad attendance because he could not sit in school. The machine at work had not been set up properly and aggravated his past injury.

When asked about a file note dated September 20, 2012 from an MPIC meeting with the Appellant and his parents, she said the Appellant's statement there that he had dropped out of school for reasons not related to the MVA was not the truth, and as a parent she never would have condoned that. He was an average student and although he may not have liked math, science or geography (like most kids), he liked school, band and hockey. He may have said that because of his head injury, since he says a lot of things like that, out of the blue, out of frustration. The note that he did not drop out because of the MVA was just the case manager's interpretation of what he said.

When asked why she had told WCB in notes of a telephone conversation on May 2, 2012, that there had been a quad accident in 2010, with road rash but no broken bones or apparent back injury, so they had not made a claim with MPIC and that his back symptoms did not begin until 2011, she said that this was not the truth. This was just the WCB interpretation of the conversation, which was wrong. The Appellant complained of back pain daily and she would never say he had no back difficulties.

When asked about the recommendations made by [neuropsychologist] to assist with the Appellant's situation and whether the family had ever done any of these things, she said she did not know because he had lived in [Province]at the time, although she thought he had exercised everyday with a special exercise ball. But he had not been in a frame of mind to manage or improve his condition and some of these things required money that they did not have.

On re-examination, the mother confirmed that many of the notes of conversations with [insurance agency] and WCB did not reflect the actual conversations she had with them and were just their interpretations. They were both wrong and read things between the lines that were not said.

The Appellant

Although he was scheduled to give evidence by teleconference on the second day of the hearing, the Appellant did not attend. He did not provide any testimony and was not available for cross-examination by counsel for MPIC.

Evidence for MPIC

Documentary Evidence

- The ambulance report of August 2, 2010 described the MVA, assessment and treatment of the Appellant immediately following, in particular noting laceration, abrasions in limbs and torso and confusion.
- A report from [hospital], of the same date, made similar observations, and focussed on a gaping laceration to the leg.
- A WCB worker incident report dated December 19, 2011 described the Appellant's duties. It did not mention the MVA, but stated:

> *I don't know what caused my injury.*
> *…*
> *Ever since the onset of symptoms in December I missed 2 or 3 shifts every week…*
> *…*
> *The pains came on in the morning at home.*
> *…*
> *I was a goalie in hockey and I would occasionally get lower back pains. The pains were never really bad.*

- An MPIC file note dated May 30, 2011 described an interview with the RCMP in [text deleted] to review the accident circumstances. The Constable advised that both parties were alert when he arrived at the scene after the MVA and that the ATV driver had been charged.
- A lumbar spine x-ray report dated December 21, 2011 noted minor scoliosis, very minimal retrolistheses, with minimal narrowing and sclerosis
- A telephone log by [insurance agency] dated April 16, 2012 noted a discussion with the Appellant and his mother, [text deleted].

  The log notes show that [Appellant's mother] told [insurance agency] that the Appellant has never had an accident at work and that [text deleted] was his first job. He had an accident a few years ago and the doctor felt that possibly because of the type of work he is doing it is aggravating this, because the machine is not set up properly.

  When asked if he had problems with his back before, [Appellant's mother] advised that he had no problems with his back prior to working. He had a car accident in 2010 with no problems; he was fine, went to school, did normal things, finished school, went and got a job, but the doctor said he had to take break from that kind of work.

  The log also noted that [Appellant's mother] advised that he used to play hockey and went to school, but had not played hockey since May last year and was out of community hockey because of age.
- A May 2, 2012 WCB file note of an interview with the Appellant and his mother reported that the Appellant attributed his injury to the repetitiveness of his work tasks and an improperly set up work station. His mother indicated that he began to experience lower

back pain around December 19, 2011, seeking medical attention from his doctor and reporting his troubles to the employer without delay.

His mother explained that he had an accident while driving his quad and sustained road rash and infected metal in his leg, requiring surgery. There were no broken bones, no apparent back injury and they had not claimed the accident with MPIC. She advised that from the 2010 accident until symptoms began in 2011, there had been no ongoing back difficulties or issues involving his back.

- Another WCB file note, dated June 26, 2012, recorded a conversation with the Appellant's employer, who recalled that it was late 2011 when the Appellant said his back was sore. He said that when the Appellant started work the company had acquired a new packing machine. This machine had caused a lot of problems for a former employee who had to leave employment because the machine required fast paced repetitive bending and was too hard on her muscles. He queried whether this machine had something to do with the Appellant's condition.
- A WCB claim update on July 12, 2012, accepted that the Appellant's work duties aggravated a pre-existing back condition.
- MPIC provided a print out from Manitoba Health Services Commission entitled "Summary of Patient Purges" which listed billings for all of the Appellant's medical visits between August 30, 2010 and October 19, 2012. Visits to [family doctor] and the surgeon who treated his leg laceration are reflected in this record. However, there is no record of any visits for back pain or symptoms until December 21, 2011.
- On February 21, 2013, MPIC's medical consultant opined that a cause and effect relationship could not be established between the MVA and back symptoms. He pointed to factors such as:

- Absence of documentation of a traumatic back injury;

- Lack of reported back symptoms until December 2011;

- Symptoms in keeping with non-specific low back pain, the most common form of back pain which can develop in the absence of a traumatic event

- Absence of diagnostic tests identifying confirmed abnormalities;

- The Appellant's return to hockey and physically challenging work tasks following the MVA.

- A further medical consultant review dated September 8, 2015 again noted that the documents on file did not show that the Appellant reported back symptoms shortly after the MVA. A physiotherapy note from February 24, 2012 indicated that he was involved in a quad accident two years ago and that his back was fine until four months ago, confirming low back symptoms quite distant to the MVA.
- In a report dated January 20, 2018, MPIC's neuropsychological consultant reviewed the file, including [neuropsychologist]'s initial report and the diagnoses it contained. She concurred with [neuropsychologist]'s statement that it was difficult to say whether the deficits she found were new deficits related to the brain injury in the MVA or exacerbations of previous areas of weakness. In her view there were some inconsistencies in presentation (eg verbal vs non-verbal intellectual skills) that were not typical of a TBI, and the pattern and severity were not common findings for a moderate TBI, let alone a mild injury such as the Appellant's.

  She also reviewed the recommendations for treatment and compensatory strategies made by [neuropsychologist] and concluded that most did not require external support. The others (psychotherapy consult, psychiatric consult and pain therapy group) did not require MPIC support as they are available in the public health system.

- The neuropsychology consultant reported again on May 8, 2018 following receipt of [neuropsychologist]'s second report which reviewed the Appellant's school records.

  The report and new school records did not change her opinion. While she concurred with [neuropsychologist] that there had been no need for special assistance at school prior to the MVA, she did not agree that the Appellant was functioning well academically, due to the variability in his school performance and grades. She also noted a teacher's letter indicating that he had missed school due to back pain, without any indication he was experiencing difficulty due to changes in cognitive function.

  The consultant concluded that while it was possible that the Appellant's psychological difficulties were related to the MVA, the medical evidence did not suggest probability.

[MPIC's HCS medical consultant]

[MPIC's HCS medical consultant] was qualified as an expert in sports medicine with expertise in forensic medical review. He explained how as an MPIC medical consultant he became involved in reviewing the Appellant's file and providing three reports.

After reviewing the information on the claim file [MPIC's HCS medical consultant] provided his first review dated February 21, 2013, which opined that a medically probable cause and effect relationship could not be established between the Appellant's symptoms and the MVA. He found no documentation or indication that there was a traumatic injury to the back. In spite of assessments conducted at the scene, at the hospital and by [family doctor] for his leg injury at various times, there was no indication of any back issues.

The first documentation of back problems in mid-December 2011 seemed related to work and was not temporally related to the MVA. Lower back pain is a common problem which can result from normal day to day activities, and despite investigation and assessment, nothing structural was identified in his spine that might contribute to his back pain. Even the bone scan which showed some suspicious uptake in the sacral wing was inconclusive. If this had occurred in the MVA it should have been painful at the time and there was no indication of this. In fact, the Appellant went back to normal activities of hockey and work.

The chart notes regarding his back symptoms in December 2011 indicated there had been some soreness for the last 2 days. This was hard to relate to the MVA of many months prior. The patient report notes from February 24, 2012 noted a quad MVA two years ago, and back problems starting four months ago.

[MPIC's HCS medical consultant] acknowledged that [family doctor]'s letter of July 24, 2012 identified ongoing problems, including lower back pain and muscle spasm due to the quad accident in August 2010. He noted, however, that the first time [family doctor] saw the Appellant for musculo-ligamentous strain was December 31, 2011. So, although this July 24 note related the back pain to the MVA, this information could not be verified by [family doctor]'s clinical notes for the days following the MVA or numerous examinations that followed, which did not identify such pain. Since [family doctor]'s statement did not coincide with his actual findings or clinic notes following the MVA, [MPIC's HCS medical consultant] could not understand what he had based it on. The evidence did not support this finding.

[MPIC's HCS medical consultant] found that [family doctor]'s report of January 18, 2013 more accurately reflected the information he had actually documented. This report reflected the

doctor's first awareness of the back problems in December 2011, a few days after the pain started, and the Appellant's insistence that his problems were a result of the MVA. This is what the Appellant had advised [family doctor]. This provided a more reasonable explanation of the history.

[MPIC's HCs medical consultant] also believed that findings such as contusion noted by [specialist #3], amounted to non specific findings and symptoms and the clinical findings did not support a diagnosis of severe lumbar contusion.

The report of the WCB doctor dated August 3, 2012 showed that the WCB had fallen short in its responsibility to investigate whether the Appellant had pre-existing back pain. WCB based its conclusion that the Appellant strained and aggravated a pre-existing chronic low back condition on limited information obtained from a physiotherapist who referred to a pre-existing condition and from [family doctor]'s noted history of back problem, without requesting further information.

[MPIC's HCS medical consultant] reviewed his second report dated September 8, 2015 and reiterated his view that the Appellant's reported statement that his back was fine until four months ago placed the onset of back symptoms quite distant to the MVA.

His third report, dated January 19, 2017 reviewed new reports from [family doctor] and [specialist #1]. He believed that [specialist #2]'s conclusions connecting the back condition to the MVA were not supported by the information on the claim file, which [specialist #1] did not have access to.

Instead, [MPIC's HCS medical consultant] continued to believe that the information on file, including from [insurance agency], WCB, the Appellant and his parents, showed that there had been no back pain prior to his workplace activities and no underlying condition arising out of the MVA which caused any back injury or symptoms.

On cross-examination, [MPIC's HCS medical consultant] was asked about the bone scan report. He thought that even though it came back suspicious for a fracture of the sacral wing, in his view this was only a suspicion and not significant. Having no back pain until December 2011 was not in keeping with a sacral fracture from the MVA, since in his experience such injuries are painful and cause limitations, which the Appellant did not report.

[MPIC's HCs medical consultant] confirmed that he did not rely upon the traffic report from the MVA, and instead reviewed the ambulance report, hospital records, the statement taken from the truck driver, [family doctor]'s clinical notes and the specialist's reports.

When asked about [family doctor]'s missing notes, [MPIC's HCS medical consultant] advised that he believed that MPIC had notes from all the clinical dates when the doctor assessed the Appellant following the MVA, and he was not aware of any missing notes that have not been accounted for.

[MPIC's HCS medical consultant] was asked whether, even if the Appellant's back injury did not need a pre-existing condition to develop, a pre-existing condition could still bring the pain on far easier.

[MPIC's HCS medical consultant] agreed that depending on what the pre-existing condition is, it could have an impact on future problems and render one more vulnerable.

[MPIC's HCS neurological consultant]

[MPIC's HCS neurological consultant] was qualified as an expert witness in clinical psychology with a specialty in neuropsychology and forensic review.

She reviewed her opinion dated January 20, 2018 which addressed whether the Appellant's cognitive and psychological issues were MVA related and whether the recommendations of [neuropsychologist] were medically required as a result of the MVA. In order to provide this opinion she reviewed not only [neuropsychologist]'s report, but also the documents on the Appellant's file.

She felt that [neuropsychologist] had provided a reasonable diagnosis of the Appellant's deficits and condition. She also agreed with her comments that it was difficult to assess causation seven years post-MVA, and noted that since all of the school records were not reviewed, it was difficult to determine whether there were any pre-existing deficits. Further, she noted that the visual and verbal deficits found were not typical in pattern or severity.

The earliest medical documentation from the ambulance and hospital emergency room recorded a 4/14 on the Glasgow coma scale and identified confusion. This was consistent with a mild TBI. By the time he reached hospital his thinking had cleared en route and he was back to a normal 15/15 level of alertness, which also indicated that the TBI sustained had been mild. This would be expected to result in brief, mild cognitive deficits in attention, memory and processing speed which would last for a short time, perhaps a few weeks.

Therefore, a diagnosis seven years later is inconsistent with the natural trajectory of recovery from a mild TBI.

[MPIC's HCS neurological consultant] agreed with [neuropsychologist] that the Appellant's deficits were of multiple etiology, but she could not see a connection to the MVA years before.

She noted some inconsistent patterns in the findings. Some of the deficiencies went way beyond the severity and pattern which would be expected. Some, particularly the difference between verbal and visual lateralization of function, one better than the other, was not consistent with a mild TBI. This pattern tended to be found in conditions affecting one half of the brain such as stroke or tumour, which was not the case with a TBI. The temporal relationship and consistency which were key in assessing causation were not present.

After [neuropsychologist] reviewed the school records and provided a supplemental report, [MPIC's HCS neurological consultant] reported again. Although she agreed that the Appellant had not required special assistance at school, she did not agree with [neuropsychologist] that the Appellant was functioning quite well academically pre-MVA. There was too much variability in his grades with some hovering just above the passing mark. Nor were there any comments regarding changes in cognitive function noted in the teacher's letter.

In reviewing the diagnosis of post concussion syndrome, [MPIC's HCS neurological consultant] noted that the documentation from the ambulance and truck driver at the scene of the MVA showed a loss of consciousness of under 10 minutes.

[MPIC's HCS neurological consultant] also did not believe that chronic pain was a factor in the Appellant's cognitive deficits since this would affect attention and processing speed, but not lateralized deficits in verbal and visual abilities, as was the case for the Appellant.

For these reasons, she did not believe that the neuropsychological data described in [neuropsychologist]'s report was consistent with mild neurocognitive disorder due to remote TBI, chronic pain, or depression arising out of the MVA.

On cross-examination, [MPIC's HCS neurological consultant] indicated that only 10-15% of individuals with a TBI go on to develop persistent symptoms beyond a typical window of days or a few months, and as time goes by that minority recovers. The persistence of symptoms noted by [specialist #1] and [family doctor #2] three years past the event, and by [neuropsychologist] after seven years were not causally connected to the MVA.

While she agreed that [neuropsychologist] did attribute the Appellant's deficits to TBI, she did not agree that [neuropsychologist] was in a more advantageous position to assess this because of her opportunity to assess and observe him, since a neuropsychological assessment months or years after an event is not a diagnostic tool for TBI. [MPIC's HCS neurological consultant] could state with certainty that his current status was not a result of TBI because it is entirely incongruent with what we know about the natural history of TBI. However, she did agree with the suggestion that chronic pain can have an effect on emotional wellbeing.

Submissions

Submission for the Appellant

The Appellant's representative submitted that the most important thing for the panel to do was to look at the facts.

Although [MPIC's HCS medical consultant] said that problems like the Appellant's can happen every day, the fact is he was involved in a high impact blunt force trauma and the probability is that his injuries were due to this MVA. Fractured hips do not happen from sitting around and, particularly in a [age] year-old, this was a result of trauma.

[MPIC's HCS neurological consultant] also stated that his deficiencies could happen from everyday life but again, the fact is that he was involved in a high impact blunt force trauma and these difficulties probably did not come from sitting on the couch.

Both [family doctor #2] and [specialist #3] recognized the Appellant's deficiencies including injury to his sacral region and head with post concussion syndrome years after the MVA. The bone scan was suspicious for a fracture in the sacral region which, for a [age] year-old had to come from an incredible impact. Even [MPIC's HCS medical consultant] recognized that such impact would have to be fairly substantial.

Another important issue for the Appellant was the missing documents from the first PIPP claim filed and the decisions which have been made surrounding that. The case manager had used these missing documents in decisions.

It was submitted that some of the WCB notes aren't actually WCB notes but are really [family doctor]'s handwritten notes. The family's frequent discussions with [family doctor] following the MVA would be reflected in those missing notes and would show causation.

Both WCB and [insurance agency] concluded that the Appellant's deficiencies were due to an aggravation from pre-existing injuries sustained in the MVA. They had their own doctors look at the same evidence and came up with those conclusions. The only people that concluded differently were MPIC and their two specialist witnesses. But both [MPIC's HCS medical consultant] and [MPIC's HCS neurological consultant] admitted that they had not seen the Appellant and if they had, it was submitted their decisions would be different. They are not as accurate as someone who has actually examined him. Doctors such as [family doctor], [specialist #1] and [neuropsychologist] had all seen the Appellant and done full workups. They stated that in their medical opinions the Appellant's deficiencies are due to the MVA. These are the only reports that we can rely upon because they saw the Appellant and the other two witnesses did not.

It was submitted that what it all comes down to is MPIC not taking this case seriously. They were looking more to get out from under their responsibility, rather than helping the Appellant. He has waited a long time for help and MPIC was not there for his well-being or to help him through this difficult time.

Submission for MPIC

In addressing the Appellant's submission, counsel for MPIC clarified that neither [MPIC's HCS medical consultant] or [MPIC's HCS neurological consultant] had indicated that seeing and examining the Appellant would have changed their evidence in regard to causation.

Counsel went on to address the two issues before the panel, the Appellant's back symptoms (including pelvis and hip) and his cognitive function and psychological status.

Back

MPIC relied upon the three HCS medical opinions provided by [MPIC's HCS medical consultant].

His opinion of February 21, 2013 said that a cause and effect relationship could not be established between the back condition and the MVA based upon five points.

These included absence of documentation identifying a traumatic injury resulting from the incident. None of the documentary evidence from the time of the MVA including at the scene, the ambulance, at [hospital] or in the weeks and months following (while the Appellant was recovering from the knee injury he sustained) showed any indication of an injury to his back. His last medical visit was on November 15, 2010 and after that, no other visits to a doctor were documented until December 21, 2011, some 16 months after the MVA. The Appellant did not show up for appointments which were scheduled on August 17 and September 1, 2011. The preponderance of evidence suggests that the Appellant was not having difficulty during this period and that he would have seen a doctor had he been experiencing problems with his back to the degree which has been submitted.

These gaps in the evidence were also reviewed in [MPIC's HCS medical consultant]'s testimony.

The documentary evidence showing the Appellant's first report of lower back problems in December 2011, was first indicated in a chart note by [specialist #2] dated December 21, 2011. Despite the testimony of the parents, this was also supported by the other collateral evidence on the file. The Appellant told a Concordia physiotherapist, who reported February 24, 2012, that the back pain had started four months before that. This helped to reinforce [MPIC's HCS

medical consultant]'s opinion, again noted in his report of September 8, 2015, that the onset of back symptoms was quite distant from the MVA, strengthening doubt in a causal connection to the incident.

Reports of log notes from [insurance agency] and WCB as well as forms filled out by the Appellant indicated that the Appellant experienced back pain at the end of a work shift and could not get out of bed the next morning. The date of the incident was recorded as December 19, 2011. When asked if he had any prior back problems, the Appellant had indicated that yes, he would occasionally have lower back pain when he played goal in hockey, but he did not attribute the pain to the MVA. He confirmed that he had not seen a doctor for this in the past.

The Appellant had reported the quad MVA to a physiotherapist and this was reflected in a WCB note dated June 29, 2012. Based upon the Appellant telling her that he had been in a quad MVA a year or two prior, she believed the nature of his work had caused an aggravation of already present back pain. Neither the physiotherapist nor WCB were aware that he had not undergone any treatment for his back after the MVA and they were not even sure of the details of the MVA, so counsel questioned how either could have come to the conclusion that there had been a pre-existing back injury which was not represented in the documentary material.

[MPIC's HCS medical consultant] also noted that lower back pain is the most common form of back pain which develops even in the absence of any traumatic event. Mechanical lower back pain can come about as a result of daily life and this was not unusual even in patients around the Appellant's age.

He also pointed to an absence of documents showing that any relevant diagnostic tests were performed following the MVA. The bone scan from 2012 did not confirm a finding of a fracture, and was not conclusive. [MPIC's HCS medical consultant] testified that if the hip had been fractured in the MVA it would have been noticeable at the time. Neither he nor [family doctor] believed that the Appellant had a hip fracture, and there was no evidence that it would have been related to the MVA.

Counsel also relied upon the documentary evidence which established that the Appellant had been able to return to hockey after the MVA, and that [family doctor] had cleared him to do so. He had undertaken employment which involved physical work, including lifting, pushing and pulling, all of which could affect the lower back. It would seem incongruous to assume that the Appellant would take on such a job if he was already experiencing lower back pain.

[MPIC's HCS medical consultant]'s review of January 19, 2017 considered further comments from [family doctor] and [specialist #1] on causation. He explained that [specialist #1] was not aware of the lack of previous documentation of back pain and relied upon the history given by the patient that the back condition resulted from the MVA, which is not supported by the documentation on the file. It was submitted that the panel should prefer the evidence of [MPIC's HCS medical consultant] who relied upon the evidence file instead of patient reports.

[Family doctor]'s reports, it was submitted, were inconsistent and unreliable when it comes to the question of causation. His first report to [insurance agency] (March 2, 2012) made no reference to the MVA.

His report of July 24, 2012 did appear to relate the pain to the MVA (although he said that he had first been seen for it in December 2011). He then walked that opinion back in a report dated January 18, 2013 which confirmed that he first became aware of the back pain after the Appellant was seen in the walk-in clinic on December 21, 2011, when he had been having back pain for a few days. He recounted the Appellant's insistence that the back pain was from the MVA. Counsel submitted that [family doctor]'s reports, which also included clearing the Appellant to play hockey following the MVA, were not as reliable, due to their inconsistency, as stated in the opinion provided by [MPIC's HCS medical consultant].

Counsel also submitted that the evidence of the parents was not consistent with their earlier statements to [insurance agency] and WCB and MPIC.

Although the father testified that his son had back pain since the MVA, in a file note dated August 29, 2012 he had advised that the back pain arose nine months after he started work.

The mother testified that her son had back pain since the MVA but this was contrary to the information she had earlier provided. She told [insurance agency] that he had no problems with his back prior to starting work and although he had an MVA in 2010, he had no problems at school before he went on to get a job. In a conversation with WCB on May 2, 2012 she indicated that he had suffered road rash in the MVA but no broken bones and no apparent back injury, until the pain started in 2011.

Counsel submitted that the panel should consider [MPIC's HCS medical consultant]'s comments regarding his disappointment with the way [insurance agency] and WCB came to their conclusion that the Appellant had a pre-existing back condition, given there was no evidence

found or investigation done to establish this. The conclusions of WCB came solely from assertions by the physiotherapist that his work had aggravated a pre-existing injury. This was later picked up by [family doctor], but their conclusions do not have a basis in the evidence and are not as reliable as the conclusions provided by [MPIC's HCS medical consultant].

Counsel noted that the Appellant had chosen not to appear at the appeal hearing as a witness, even though he had been scheduled to do so. An adverse inference should be drawn from this failure to participate in the proceedings and to respond to the other evidence in the file. By not appearing, the Appellant has not satisfied the onus upon him, and any admissions that are attributed to him in the documents on file should be read as such.

Cognitive and psychological

Counsel for MPIC relied upon the two HCS reports (dated January 20, 2018 and May 8, 2018) provided by [MPIC's HCS neurological consultant] who was qualified as an expert in clinical psychology with a specialty in neuropsychology and forensic review.

In her first report and in her evidence at the hearing, [MPIC's HCS neurological consultant] explained why the diagnoses made by [neuropsychologist] could not in her view be connected to the MVA. While the Appellant did suffer from a mild TBI, it could not be related to the mild neurocognitive disorder diagnosed by [neuropsychologist]. MPIC had acknowledged that a mild TBI occurred and Permanent Impairment benefits payment were made in respect of that.

However, [MPIC's HCS neurological consultant] explained that in the vast majority of cases, the effects resolved within hours or days, possibly extending into weeks or months. But the Appellant did not complain of such symptoms until 16 months after the MVA, at that point

complaining of headaches and sleeplessness which appeared to be related to the onset of back pain at that time.

A review of the ambulance and [hospital] records and Glasgow coma scale measures showed that it was unlikely the Appellant had more than a 15 minute loss of consciousness, which shows a less significant injury. There was no evidence to show that cognitive function affected the Appellant or his academic performance following the MVA and he did not attribute his leaving school to effects of the MVA.

Counsel submitted that the evidence did not support a temporal relationship between the psychological diagnosis and the MVA. [Neuropsychologist]'s findings appear to be predominantly based upon reporting by the Appellant and his parents, with very little reference to collateral documentation in the report itself. According to [MPIC's HCS neurological consultant], that information was paramount and, following her credible testimony, her evidence regarding causation should be preferred to that of [neuropsychologist]. On that basis, the only possible conclusion is that the diagnoses identified by [neuropsychologist] cannot, on a balance of probabilities, be related to the MVA and that the IRD should be upheld.

In the alternative, if the panel were to find a causal connection, counsel noted that the recommendations made by [neuropsychologist] were for assistance which was available in the public health system, noting the mother's evidence that the Appellant had not accessed any of these services. Further, any treatment recommendations would have to be returned to case management to determine how they would be dealt with.

Appellant's Reply

In addressing statements made by the Appellant and his parents to [insurance agency] and WCB, his representative argued that when you report to [insurance agency] or WCB you deal with the date at hand by giving them the date of the incident. They are more concerned with getting all the paperwork filled out before they do their investigation. The incident they were concerned with at that time was the December 21, 2011 back pain which was preventing the Appellant from working, because of his pre-existing injury.

He also addressed MPIC's comments about the conclusion made by [specialist #1] and [neuropsychologist], submitting that they came to their conclusions by reviewing the documents supplied by MPIC, the same way that [MPIC's HCS medical consultant] and [MPIC's HCS neurological consultant] came to their conclusions. The only difference is that [MPIC's HCS medical consultant] and [MPIC's HCS neurological consultant] are expert witnesses paid by MPIC, so of course they are going to form those opinions, while the other doctors came to their conclusions only because that is what they found.

The representative took issue with the notes of the case manager, who was not subpoenaed as a witness for the hearing. He suggested that [family doctor] lost the Appellant's medical file, so that a lot of documents are missing.

When [family doctor] cleared the Appellant for hockey, he was only clearing him for try-outs, but the Appellant did not actually play hockey that year.

The jobs that the Appellant had were working for employers who were friends of his parents, so they provided him with accommodations and restricted duties. The Appellant's parents had pushed him to go back to work so that he could take more pride in himself, and he chose to work through pain because he had no other options, since MPIC was not helping him.

While counsel for MPIC acknowledged that the Appellant had suffered a brain injury, MPIC had done nothing about it until 2015, failing to look after the Appellant's best interests. Therapies were discussed with MPIC as soon as the claim was opened, but it was submitted that MPIC directs all care after the MVA and controlled which medical doctors and tests the Appellant had access to.

Discussion

The MPIC Act provides:

> **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; (« dommage corporel causé par une automobile »)
>
> **Reimbursement of victim for various expenses**
>
> 136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

(b) the purchase of prostheses or orthopedic devices;

(c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;

(d) such other expenses as may be prescribed by regulation.

Manitoba 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;

(b) when care is medically required and dispensed outside the province by a person authorized by the law of the place in which the care is dispensed, if the cost of the care would be reimbursed under The Health Services Insurance Act if the care were dispensed in Manitoba.

The onus is on the Appellant to show, on a balance of probabilities, that the IRDs were in error. The panel has carefully reviewed the documentary evidence on file, the testimony of the Appellant's parents and MPIC's expert witnesses, and the submissions of both parties. For the most part, we have addressed the 2 issues separately.

Section 150

The Appellant alleged that MPIC acted improperly, not only in conjunction with the vehicular damage claim in the courts, but also with his PIPP claim for his back condition.

It was alleged that:

- The Appellant and his family had not initially wanted or intended to file a PIPP claim;
- Counsel for MPIC encouraged them to file a PIPP claim even though they had not wanted to;
- MPIC lost or failed to produce all documentation connected with this initial PIPP claim, including the claim itself:
- The Appellant filed subsequent PIPP claims which are the subject matter of this appeal;
- MPIC lost or failed to produce all documentation of the Appellant's back pain complaints from the year following the MVA.

Aside from unsubstantiated allegations regarding the loss of documents, the Appellant did not bring cogent evidence before the panel to support his allegations or address the issue under s. 150 in his closing arguments. The onus of proof remains on the Appellant in appeals before the Commission. As a result, we find that the Appellant has not established, on a balance of probabilities, that MPIC acted improperly, or failed to discharge its duties under s. 150 of the Act.

Back Condition

In claiming entitlement to PIPP benefits for his back condition, the Appellant and his parents submitted that his back, hip and pelvic problems were caused by the MVA. The primary reasons that MPIC rejected a causal connection were the lack of documentation in his medical file to establish that a traumatic back injury had occurred in the MVA and that the Appellant had not attended his doctors with complaints of back pain for investigation or assessment in the year following the MVA.

This question arose when [MPIC's HCs medical consultant] reviewed the first documentation of the Appellant's complaints of back pain in December 2011, more than a year after the MVA. He had last seen the surgeon for his leg on November 15, 2010. In the chart notes from the family practice clinic, there is no record of the Appellant attending for complaints of pain connected to the MVA (or for any other matter) between September 21, 2010 and December 21, 2011.

The ambulance and hospital records following the MVA do not record complaints of back pain, nor do [family doctor]'s chart notes from that time.

The lack of attendance for care or complaints of back pain was also supported by the patient purge records from MHSC, which record all billed visits made by the Appellant to his doctors.

As submitted by MPIC, the first report by the Appellant of back problems did not occur until December 2011, and the panel finds that this is supported by the documentary evidence on file.

The majority of his first recorded complaints of back pain appeared to centre upon a workplace injury.

His employer suggested that he go for physiotherapy treatment, which was funded by [insurance agency] insurance. Records from [insurance agency] establish that the Appellant described his back pain first occurring at work on December 19, 2011. This was corroborated by statements made to [insurance agency] by the Appellant and his mother.

The first mention of the MVA during this period where the Appellant was focusing on his back pain appears in reports from the physiotherapist.

The physiotherapist first reported on February 24, 2012, noting a "*Quad accident 2 years ago"* but stating "*Back fine until 4/12 ago*" before describing his work demands.

The physiotherapy clinic continued to treat him, funded by [insurance agency], until [insurance agency] wrote on April 17, 2012 advising that his medical condition appeared to be work related and advising him to file a WCB claim.

He did so and advised WCB that as there had not been a specific accident at work, he "attributed his injury to the repetitiveness of his work tasks and an improperly set up work station". His mother indicated to WCB that when his back difficulties began around December 19, 2011, he sought medical attention from his doctor and reported his trouble to his employer without delay.

When WCB interviewed the physiotherapist, she advised that:

- *She stated he told her his work was very physical in nature as he worked 12 hour shifts as a [text deleted] and this entailed a lot of bending forward at the torso, twisting of the torso while bending forward and standing, and carrying heavy to light loads (not sure of the weights) of pizza/cardboard boxes. She said he told her he was asked to work quickly; lot of repetitive movements involving the lower back*
- *She said [the Appellant] told her he had been in a quad accident a year or two prior to him seeing her and she believes the nature of his work caused an aggravation to his already present low back condition*
- *She said she was not aware if he underwent any back treatment during recovery from his accident and she was not sure of the details of the accident or the extent of his physical injuries as a result*
- *She said [the Appellant] complained of low back pain and said he reported it was due to his work*
- *She said aside from the accident, she was unaware of any outside activities or possible trauma which may have contributed to his condition*

Although the physiotherapist did not provide any detail or discussion regarding the nature of the incident or the injuries sustained therein, or explain why the pain had not occurred until 4 months prior, the reference was noted by [family doctor] and relied upon by WCB in its conclusion that the Appellant's back pain was an aggravation of a pre-existing injury.

WCB ultimately accepted limited responsibility for the claim, stating that his work duties aggravated his pre-existing back condition, which was attributed to the MVA.

While the panel acknowledges the finding of WCB that the back pain arose due to an aggravation of a pre-existing injury, the panel is not bound by such findings and must arrive at its own conclusions, based upon the evidence and submissions before us. It is difficult for us to place as much weight upon the report of the physiotherapist that [family doctor] and WCB did, in order to connect his back pain to the MVA. The physiotherapy reports only briefly mention the MVA as part of the patient's reporting, recognize that the back pain had not started until 4 months earlier, and provide no details of the MVA, his injuries in that incident or its effect on his condition.

Nor did the employer's comments regarding the machine the Appellant worked on and the ergonomic problems it may have caused seem to have been given much weight.

[Specialist #1] described the MVA and referred to the Appellant's loss of consciousness at the scene, post-MVA soft tissue injuries and the injury to his leg. He questioned a suspicious but not definite fracture in the right sacral wing which had appeared on bone scan. X-ray showed shallow scoliosis. He requested an MRI which showed no injury such as herniation, spinal stenosis or nerve root compression. His diagnosis was chronic mechanical low back pain and

myofascial pain syndrome. No further investigation was done or comments made regarding functional ability. He recommended strengthening and a multi-disciplinary approach.

The Appellant also relied upon reports from [family doctor] which attributed the origin of his back pain to the MVA.

In reports dated July 24, 2012, and August 1, 2012, [family doctor] stated that:

> *[The Appellant] was first seen by our walk-in (sic) doctor-[text deleted] on Dec. 21/11.*
> *[The Appellant] had ongoing problems with lower back discomfort due to a quad accident where he struck the driver door of a semi truck and flipped over the hood landing on the road in Aug.3/10 (sic). He awoke with increased lower back pain. He was found to have muscular spasm in both paraspinal muscles.*
> *I first saw [the Appellant] on Dec. 30th. I felt he had a musculo-ligamentous strain and he could probably RTW with a bit of muscle relaxants. He should avoid ferequent (sic) bending and lifting.*

While the Commission recognizes the importance of commentary from a long-standing treating practitioner, the inconsistencies found in [family doctor]'s opinions and statements created unreliability and resulted in some confusion in this case.

His clinical notes do not contain any record of visits from the Appellant between September 21, 2010 (just after he had provided the Appellant with a September 14, 2010 medical clearance to play hockey) and December 21, 2011. In addition to his clinical notes, his narrative reports confirmed that the Appellant did not visit the clinic with complaints of back pain until December 21, 2011. The panel accepts the submission of counsel for MPIC that [family doctor] acted quickly and efficiently in noting, investigating and assisting the Appellant with his MVA leg injury, which ultimately required surgery. There is no reason to believe that if the Appellant had come to him complaining of back pain in the months following the MVA that he would not have dealt with it in a similar manner, or that he failed to note the complaints or investigate them.

As [MPIC's HCS medical consultant] noted, the severe pain described by the Appellant's parents could be expected to have led the Appellant to seek medical care if he was suffering from the intense pain of a right sacral fracture at the time, but there is no record of such a request.

As time progressed however, [family doctor] seems to have responded more and more to the historical reporting of symptoms from the Appellant and his parents, and their strong conviction that due to the severity of the incident, his back symptoms had been caused by the MVA.

On January 18, 2013 he reported that he first became aware of the back pain after the Appellant was seen on December 21, 2011 and that he suffered back pain for a few days prior to that visit, noting that the Appellant:

> *… relates his problem to the accident - it has to be because I was pretty beet-up (sic) from head to foot. He initially did not feel back pain to his recollection - this happened sometimes later. He is adamant though that his back bothers him because of injuries in the accident. He did not experience pelvic pains after the accident although there is suggestion on his bone scan that he could possibly have suffered a fracture in the ala of his pelvis in the past.*
> *As a result of the his back pains he has missed a lot of classes in school and later missed work due to back pains. He also has not been able to continue to play hockey and has to be careful lifting his band equipment when he plays in a band.*

In the doctor's letter to the Appellant's mother dated November 18, 2016 he reviewed the history and chart notes until January 15, 2015, when he advised that he would withdraw his services as the family physician by April 15, 2015, recommending that the Appellant seek care from another clinic. He described the MVA aftermath, the leg injury and referral to [surgeon] for surgery. He confirmed that "it was obvious he had a back injury because of the accident" since there was no evidence of a back problem prior to the MVA or any condition to delay his recovery. Subsequent investigations into his back pain found that he had suffered soft tissue injuries. His work

difficulties were described, but the gap in reporting of back symptoms before December 2011 was not addressed.

Overall, the evidence from the Appellant and his parents did not assist the panel with the difficulties in [family doctor]'s evidence. The credibility and reliability of witnesses are assessed through factors which include the consistency of the evidence and inconsistencies between testimony and documentary evidence.

The parents' evidence that the Appellant suffered and reported a back injury in 2010 was not corroborated by the documents on file, including the notes of conversations with the case manager, and particularly the notes made by [insurance agency] and WCB. Both parents denied the contents of these conversations as recorded in the notes of all the various case managers and investigators, claiming that this was just their opinion of what they had been told and not an accurate reflection of what was said.

The panel notes the consistency of the recorded statements at the time across different organizations. The parents were not able to provide any explanation as to why all these different individuals would mistakenly record their conversations, and we find that their evidence on these points was not as reliable as the notes made by these employees in the course of their duties, contemporaneously at the time of the conversations.

The Appellant did not testify at the hearing. His parents indicated that he was at work, and the panel asked that he phone in to the hearing. He did not do so, and we were unable to hear any evidence from him, through direct or cross-examination.

Counsel for MPIC noted that the Appellant chose not to appear even though he was scheduled to do so. He submitted that an adverse inference should be drawn from his failure to participate in the proceedings and respond to the documentary evidence that directly contradicts the position his representative has taken on this appeal. The Appellant has the onus of proof and any admissions that are attributed to him in the documents on file should be accepted as such.

The Appellant's representative argued that the family's comments were not properly recorded in the documents. It was submitted that we cannot trust MPIC, [insurance agency] or WCB and that only the evidence of the Appellant and his parents should be accepted. But the panel recognizes that memory can fade with time. We find that the best evidence before us as to what occurred is found in the notes taken at the time and presented in the documentary evidence on file. Overall, the parents' evidence was inconsistent with many of these documents and therefore unreliable.

The Appellant did not testify or present himself for cross-examination. The onus of proof on appeal is on the Appellant and the Commission finds that he did not meet this onus to challenge the contents of the documentary evidence by appearing and testifying in order to present a different version of events.

Overall, in considering both the documentary evidence and the testimony of the witnesses, the panel was not able to find that the Appellant's back, pelvic and hip problems were consistently reported as having arisen following the MVA and prior to December 2011. The Commission therefore finds that the Appellant has failed to meet the onus upon him to show, on a balance of probabilities, that the IRO erred in finding that his back, hip and pelvic condition are not causally related to the MVA.

The IRD of September 23, 2015 is upheld and the appeal from that decision is hereby dismissed.

Cognitive Status and Psychological Condition

The issue of causation regarding the Appellant's cognitive status and psychological condition largely centered upon the distinctions between the reports of [neuropsychologist] and the opinions and testimony of [MPIC's HCS neurological consultant].

Following a lengthy assessment with the Appellant and his parents, [neuropsychologist] arrived at a list of diagnoses of the Appellant's cognitive and psychological issues, along with treatment options and recommendations. Following a review of the Appellant's school records to assist with her assessment of his pre-MVA status, she went on to conclude that:

> *School records reviewed suggest that [the Appellant] was functioning well academically pre-injury. There is no suggestion that he needed any special assistance in the school setting. This is fitting with what was reported by [the Appellant] and his parents during interviews, and suggest that his cognitive abilities were intact pre-accident. He was also reportedly physically healthy before his injury, with no indication of any psychological disorder.*

[MPIC's HCS neurological consultant] accepted [neuropsychologist]'s diagnoses and noted that the recommended treatment options were available within the public health system. But her reports and testimony criticized and did not accept the opinion of [neuropsychologist] regarding causation. While MPIC has accepted that the Appellant suffered a minor TBI in the MVA, she felt that this would resolve in the vast majority of cases, and would not result in complaints some 16 months after the incident. The information from the MVA did not support a lengthy loss of consciousness and the Glasgow scores confirmed that the Appellant was much improved even by the time he reached hospital.

She found [neuropsychologist]'s findings to be largely based on subjective reporting and did not agree with her conclusion that the school records showed that the Appellant was doing fine in school pre-MVA, due to the great variability in his grades.

In reviewing her comments, the panel notes that [MPIC's HCS neurological consultant] focused much of her analysis on the passage of seven years between the MVA and [neuropsychologist]'s reports and how unlikely she thought it was that a minor TBI seven years earlier could be the cause of the deficits found. However, the panel looked further at the Appellant's symptoms and the history of how he came to be referred for a neuropsychological assessment years before [neuropsychologist]'s eventual assessment in October, November and December of 2017.

[Neurologist] assessed the Appellant and diagnosed post concussion syndrome in a report dated June 12, 2013.

[Text deleted], a psychological consultant with MPIC's HCS team discussed the Appellant's psychological condition and his parents' fears about a possible head injury with the case manager on January 14, 2015. He recommended that the Appellant be referred for a full neuropsychological assessment and MPIC arranged for this assessment with [neuropsychologist #2]. The Appellant did not wish to see [neuropsychologist #2] and the assessment ultimately did not occur at that time.

Then, on April 4, 2017 the HCS psychological and TBI consultants wrote a report addressing the Appellant's reported loss of consciousness, memory problems and anger issues, his eligibility for a PI award for a minor cerebral concussion or contusion, and [neurologist]'s report of memory

problems. They recommended that the Appellant be referred for a full neuropsychological assessment. The Appellant then met with [neuropsychologist], in [BC].

[Neuropsychologist] did have access to and reviewed the documents and medical history in the Appellant's file. She had an opportunity to interview the Appellant as well as obtain collateral information from his parents. She conducted standardized testing and found impairments which led to the diagnoses set out in her report:

> *That being said, there are distinct areas of impairment noted. These include:*
>
> - *[The Appellant]'s visual-spatial abilities. He has significant difficulty when he is required to copy or reproduce visual material as well as difficulty manipulating visual information (e.g., rotating and assembling shapes) "in his mind". Visual-spatial perception is a notable weakness for him, and may have impacted his performance in other areas;*
> - *Psychomotor speed, relying on his ability to reproduce (even simple) symbols is well below expectations, despite some other aspects of processing speed being average for his age. His performance in this area may be impacted by his weaker visual-spatial abilities;*
> - *Mathematical computation abilities;*
> - *Sustained attention, with difficulty remaining focused and engaged in more lengthy tasks;*
> - *Memory for visual information (perhaps related to poor visual-spatial perception);*
> - *Ability to freely recall (both immediately and after a longer delay) verbal information that is presented without any structure or context (i.e., a word list). However, his ability lo later recognize this information was within normal limits (suggesting intact encoding of the information);*
> - *Verbal and non-verbal reasoning and abstraction skills;*
> - *Planning and organization of multi-step solutions to problems; and,*
> - *Utilization of feedback in order to conceptualize and modify his approach to, and solution for, a problem.*
>
> *Overall, his difficulties are fitting with a <u>Mild Neurocognitive Disorder due to multiple etiologies</u> (e.g., TBI, mood, chronic pain), with more significant difficulties processing visual than verbal information.*
>
> *[The Appellant] also reported a number of negative changes in his mood, personality, and self-perception since the accident. Of note, a diagnosis of <u>Major Depressive Disorder</u> is warranted based on the current profile of psychological symptoms he is reporting. Furthermore, he is suffering from ongoing difficulties related to post-traumatic stress including intrusive thoughts and feelings, increased reactivity, and negative alterations in his mood and beliefs about himself, others, and the world (though slightly below DSM-5*

> *diagnostic criteria for PTSD). His psychological difficulties may well account for (or exacerbate) some of his cognitive difficulties (e.g., difficulties with attention, memory, and/or problem solving). Additionally, [the Appellant]'s mood may also be accompanied by serious impairment in occupational and social functioning. Chronic physical symptoms - including pain, fatigue, and lack of restorative sleep - can also be associated with reports of persistent cognitive and mood difficulties*.

At that point however, she was not able to arrive at a conclusion regarding causation because she felt she did not have enough information about how well the Appellant was functioning prior to the MVA:

> *That being said, it is difficult to say if these difficulties represent new deficits related to the brain injury that [the Appellant] sustained as a result of the accident, or exacerbation of previous areas of relative weakness.*

This led to the Appellant's parents obtaining and providing her with his school records. Following review of the school records, she opined that his cognitive abilities pre-accident were intact.

In her evidence, [MPIC's HCS neurological consultant], stated that the MVA was the possible, but not the probable cause of the Appellant's cognitive issues. She explained that the difference in verbal/visual strength was an unlikely presentation to result from a minor TBI and was more likely due to such factors as stress, brain tumors or epilepsy. There was no evidence that any of these conditions applied, or any indication that the Appellant should be tested for any of these conditions. In contrast, [neuropsychologist] considered the many factors that could be at play for the Appellant, including not just the TBI, but also the impact the MVA had upon his mood and psychological trauma.

In reviewing [neuropsychologist]'s reports, as well as [MPIC's HCS neurological consultant]'s commentary, the panel finds that the evidence does not support MPIC's suggestion that [neuropsychologist] was wrong in her conclusions.

[Neuropsychologist] attributed the cause of his condition to multiple etiologies, many related to the MVA, including his MVA related TBI and mood disorder. The MVA does not have to be the only cause of his condition and [neuropsychologist] identified the MVA and its effects as significant causal factors.

Given her ability to review the documents and history on the Appellant's file from both before and after the MVA, to interview and observe the Appellant and his parents and to conduct standardized testing, we find her evidence to be the most reliable assessment of the role played by the MVA in the Appellant's cognitive function and psychological condition. She found that the Appellant:

> *... met criteria for a Mild Neurocognitive Disorder due to multiple etiologies, including accident related traumatic brain injury, mood disorder (e.g., Major Depression and signs of traumatic stress) and chronic pain.*

Accordingly, the panel finds that the Appellant's cognitive and psychological issues were causally connected to the MVA, and that he has established, on a balance of probabilities, that he is entitled to PIPP benefits in this regard.

This leads us to consider the list of treatment recommendations provided by [neuropsychologist]. MPIC did not provide any further assistance to the Appellant following [neuropsychologist]'s diagnoses and reports, in spite of these recommendations. Having found a casual connection between the Appellant's cognitive and psychological deficiencies and the MVA which require

treatment and assistance, the Commission does not agree that the Appellant should be left on his own to navigate the public health system in order to find, procure, arrange and fund the care and treatment he requires to assist him in dealing with the deficits caused by the MVA. Therefore, the issue of treatment will be referred back to the case manager for assessment of how best to implement the list of treatment recommendations provided by [neuropsychologist].

The Appellant's appeal from the decision of the IRO dated August 27, 2018 is allowed and the issue of the Appellant's cognitive and psychological treatment referred back to MPIC for case management.

Dated at Winnipeg this 18th day of November, 2021.

LAURA DIAMOND

JANET FROHLICH

SANDRA OAKLEY