

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-104**

PANEL: Ms. Yvonne Tavares, Chairperson
Mr. Wilson MacLennan
Ms. Laura Diamond

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Jim Shaw.

HEARING DATE: February 3, 2003

ISSUE(S): Entitlement to additional Permanent Impairment Benefits.

RELEVANT SECTIONS: Sections 127 and 129 of The Manitoba Public Insurance Corporation Act (the "MPIC Act") and Section 2 and Schedule A of Manitoba Regulation 41/94.

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant was involved in a motor vehicle/pedestrian accident on December 1, 1999. As a result of the injuries which he suffered in that accident, the Appellant sustained permanent physical impairments which, pursuant to Section 127 of the MPIC Act, entitle him to a lump sum indemnity in accordance with the Regulations to the MPIC Act. The Appellant is appealing the Internal Review decision, dated June 24, 2002, with respect to the amount of the lump sum indemnity as calculated by MPIC.

Section 127 of the MPIC Act provides that:

Lump sum indemnity for permanent impairment

127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. and not more than \$100,000. for the permanent impairment.

The Regulations set out the amount available for each type of permanent impairment as a percentage of the total amount available.

The Internal Review decision, dated June 24, 2002, confirmed the case manager's decision of February 20, 2002, which had determined a total permanent impairment benefit of 32.19%. This impairment benefit had been calculated as follows:

Permanent Impairment:	Percentage
Right hip range of motion:	
10% loss of hip flexion	.80%
Complete loss of extension	2.00%
18% loss of external rotation	0.54%
Leg length discrepancy	1.50%
Right knee injury:	
10% loss of flexion	1.00%
Loss of mobility	20.00%
Scarring:	
Facial scars	0.37%
Right hand scars	0.40%
Right scalp scarring	0.58%
Right leg scarring	4.76%
Left leg scarring	<u>0.29%</u>
Total:	<u>32.24%</u>

(An adjustment in the total percentage pursuant to the Table of Successive Remainders, resulted in a decrease of .05% and therefore the total permanent impairment benefit was based on 32.19%).

The total of 32.19% when applied against the \$110,076.00 maximum impairment benefit payable in 1999, resulted into a total impairment benefit in the amount of \$35,433.46.

The awards for loss of range of motion to the right hip and right knee, and for scarring, were based on measurements taken by a physiotherapist. The Appellant presented no medical evidence at the hearing of the appeal to contradict the measurements or the subsequent assessment of the permanent impairment benefits undertaken by MPIC. Accordingly, the Commission finds no reason to disturb these permanent impairments benefits as calculated by MPIC.

The award for loss of mobility of 20% had been arrived at following a further review of the medical information on the Appellant's file by [MPIC's Doctor], [text deleted]. This percentage was awarded for the Appellant's inability to ambulate as he did prior to the motor vehicle accident. The award was based upon the Schedule of Permanent Impairments, Division 2, Subdivision 3, Item 13(d)(ii). According to [MPIC's Doctor's] Inter-Departmental Memorandum, dated January 31, 2002, the decreased range of motion awards would remain and, when added together with the 20% award for loss of gait, would equal a mid-range award for ability to stand, but great difficulty and/or inability to walk for individuals with incomplete quadriplegia or paraplegia.

The Appellant contests the assessment of the 20% permanent impairment benefit. His representative submits that a higher percentage should be awarded, since the Appellant is virtually unable to walk and therefore the minimum range of the impairment benefit is not a fair reflection of the severity of the Appellant's impairment.

Subsections 129(1) and (2) of the MPIC Act provide as follows:

Evaluation of permanent impairment under schedule

129(1) The corporation shall evaluate a permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

Impairment not listed on schedule

129(2) The corporation shall determine a percentage for any permanent impairment that is not listed in the prescribed schedule, using the schedule as a guideline.

Part 1, Division 2, Subdivision 3, Item 13(d)(ii) of Manitoba Regulation 41/94 provides that:

Subdivision 3: Spinal Cord and Brain

13. Spinal cord or brain

(d) Impairment affecting posture and ability to walk, excluding quadriplegia and paraplegia, resulting in

(ii) ability to stand, but great difficulty or inability to walk: 20 to 40%

Upon a careful review of the Schedule of Permanent Impairment Benefits and relying upon the opinion of [MPIC's Doctor], the Commission confirms the permanent impairment benefit of 20% for loss of mobility as assessed by MPIC.

In the circumstances of this case, it appears that MPIC's Healthcare Services Team applied Section 129(2) of the MPIC Act. The Schedule of Permanent Impairments does not provide an award for loss of mobility due to the injuries sustained by the Appellant. Although loss of range of motion of the hip and knee is contemplated by Division 1, Subdivision 2, Items 12 and 14, the decrease in independent mobility sustained by the Appellant was not contemplated by the Regulation. As such, MPIC's Healthcare Services Team appears to have utilized Division 2, Subdivision 3, Item 13 of the Schedule of Permanent Impairments as a guideline in order to

assess an appropriate permanent impairment benefit for the Appellant. As [MPIC's Doctor] noted in his Inter-departmental Memorandum dated January 31, 2002, the 20% award when added together with the decreased range of motion awards, would equal a mid-range award for ability to stand, but great difficulty and/or inability to walk. The Commission is satisfied that this is a fair and appropriate award in the circumstances of this case.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal with respect to the foregoing permanent impairment awards and confirms the decision of MPIC's Internal Review Officer bearing date June 24, 2002.

Several additional matters were identified during the course of this appeal that shall be referred back to MPIC's case manager for an assessment and determination of whether or not a permanent impairment benefit is applicable for this Appellant. These matters include:

1. An award for alteration of cerebral tissue, pursuant to Division 2, Subdivision 1, Item 5, arising from the Appellant's loss of consciousness immediately after the motor vehicle accident;
2. An award for impairment to the cardiovascular system, pursuant to Division 7, arising from the congestive heart failure suffered by the Appellant post-operatively during his stay in the [text deleted];
3. An award for loss of function of the thigh or leg, pursuant to Division 1, Subdivision 2, Item 11(q), arising from possible muscle atrophy of the leg; and
4. An award for a psychological disorder, pursuant to Division 9, arising from the Appellant's depression, withdrawal from social interaction, loss of self-esteem and loss of independence.

Dated at Winnipeg this 5th day of February, 2003.

YVONNE TAVARES

WILSON MACLENNAN

LAURA DIAMOND