



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-69**

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Laura Diamond
Mr. Les Marks

APPEARANCES: The Appellant, [text deleted], was represented by
[Appellant's representative];
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATE: June 25, 2003

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

RELEVANT SECTIONS: Sections 127 and 184(1) 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 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

The Appellant was involved in a motor vehicle accident on July 3, 1998. 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 September 14, 2001, 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 September 14, 2001, confirmed the case manager's decision of May 14, 2001, which had determined a total permanent impairment benefit of 28.25%. This impairment benefit had been calculated as follows:

<u>Permanent Impairment</u>	<u>Percentage</u>
Right lower limb – scarring	7.5%
Decreased range of motion – right hip	7.0%
Alteration of cerebral tissue	0.5%
Sternal fracture	1.0%
Rib fractures	0.5%
Pelvic fractures	1.0%
Left hip – abduction	1.0%
Decreased range of motion – left hip	4.0%
Enhancement Factor of the left and right hip	1.75%
Facial scarring	2.5%
Right Shoulder scarring	2.0%
Total:	28.25%

(An adjustment in the total percentage pursuant to the Table of Successive Remainders, resulted in a decrease of 0.5% and therefore the total permanent impairment benefit was based on 28.25%.)

The total of 28.25% when applied against the \$108,664.00 maximum impairment benefit payable in 1998, resulted in a total impairment benefit in the amount of \$30,697.58.

The awards for loss of range of motion to the hips, and for scarring, were based upon 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 impairment benefits as calculated by MPIC.

With respect to the award of 0.5% for the rib fractures sustained by the Appellant in the accident, counsel for MPIC agreed at the outset of the hearing, that the Appellant was entitled to an additional permanent impairment benefit of 1%. The Appellant had sustained fractures to the 4th, 5th, and 6th ribs as a result of the motor vehicle accident. The case manager had awarded the Appellant a benefit of 0.5% for all three fractures. However, counsel for MPIC submitted that, in accordance with this Commission's previous decision in *[text deleted] AICAC file no. AC-01-69*, the Appellant was entitled to an award of 0.5% in respect of each rib fracture.

The Commission therefore finds that the Appellant is entitled to be compensated on the basis of 0.5% in respect of each of the ribs which sustained fractures. Since he has already received 0.5%, which would be equivalent to a fracture sustained to a single rib, he is entitled to an additional 1% for the other two ribs which were fractured as a result of the motor vehicle accident. When multiplied by the maximum permanent impairment benefit for 1998 of \$108,664.00, this results in an additional award of \$1,086.64 payable to the Appellant. Interest in accordance with Section 163 of the MPIC Act shall be added to that amount.

The Commission agrees with the assessment and calculation of the permanent impairment benefits paid to the Appellant with respect to the sternal fracture and pelvic fractures sustained by the Appellant as a result of the motor vehicle accident. On the evidence presented to it, the

Commission is satisfied that these awards are fair and appropriate in the circumstances of this case.

Two 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 restriction of movement of the shoulder joint

At the hearing of this matter, the Appellant's representative submitted that the Appellant had sustained a loss of shoulder function which was directly related to the motor vehicle accident, since the Appellant had suffered with that physical impairment since the accident.

The Internal Review Officer in his Inter-Department Memorandum to [MPIC's doctor] of MPIC's Health Care Services Team, dated August 31, 2001, requested that [MPIC's doctor] advise as to the following:

4. I would appreciate if you could comment specifically on whether the medical evidence on the file supports an award under Division 1, Subdivision 1, Section 4(c) (Page 8 of the Schedule).

If the currently-available medical evidence does not support such an award, please indicate what investigations could be done to establish, or rule out, an entitlement under Section 4(c).

In his Inter-Departmental Memorandum dated September 5, 2001, [MPIC's doctor] responded as follows:

4. *The Internal Review Officer asked if medical evidence on file supported an award under Division 1; Subdivision 1; Section 4(c) (page 8) of the Schedule.*

According to a functional assessment of the claimant's home environment dated May 29, 2001 by [Appellant's occupational therapist] of [vocational rehab consulting company], the claimant had decreased range of motion in his shoulders which she related to neck, upper back and shoulder pain. No specific diagnosis was reported to account for the pain or decreased range of motion. Prior to this report (which was obtained subsequent to the

previous review), there were no reports of shoulder dysfunction other than scarring of the right shoulder reported. For a permanent impairment award to be applicable, information defining a cause/effect relationship between the motor vehicle collision and the claimant's decrease range of motion in the shoulders would be required. This information would have to contain a diagnosis, objective findings that support the diagnosis and a medically plausible relationship between the trauma of the collision and the development of the listed diagnosis.

From the information available to the Commission, it appears that no further investigations were carried out by MPIC's case manager, either to establish, or rule out, a cause/effect relationship between the motor vehicle collision and the Appellant's decreased range of motion in the shoulders. Therefore, this matter shall be referred back to MPIC's case manager, in order to determine whether or not a cause/effect relationship exists between the motor vehicle accident and the Appellant's shoulder problems and whether or not the Appellant would be entitled to a permanent impairment benefit in respect of the restriction of movement of his shoulders.

2. An award for loss of function of the thigh or leg

At the hearing of this matter, the Appellant's representative submitted that, as a result of the motor vehicle accident, the Appellant sustained a great deal of loss of strength of the leg and loss of muscle mass of the legs.

The Commission finds that this matter shall be referred back to MPIC's case manager for a determination of whether or not a permanent impairment benefit for the Appellant's loss of function of the thigh or leg, pursuant to Division 1, Subdivision 2, Section 11(q), arising from possible muscle atrophy of the leg, is applicable in these circumstances.

Lastly, at the hearing of this matter, counsel for MPIC submitted that the Commission lacked the requisite authority to refer matters back to MPIC's case manager for additional review and investigation.

In this regard, we note that the powers of the Commission on an appeal are set out in Section 184 of the MPIC Act. Section 184(1) provides that:

Powers of commission on appeal

184(1) After conducting a hearing, the commission may

- (a) confirm, vary or rescind the review decision of the corporation; or
- (b) make any decision that the corporation could have made.

In accordance with the powers granted to the Commission pursuant to Section 184(1), the Commission finds that it has the authority to vary a decision of MPIC or to make any decision that MPIC could have made. In the context of an appeal respecting entitlement to permanent impairment benefits, the issues before the Commission may involve a determination of whether or not all applicable permanent impairment benefits have been awarded. In those circumstances, we find that the Commission may vary an Internal Review decision to require additional investigations by the case manager, if evidence has been presented during an appeal hearing which would warrant such investigations taking place. We also find that since MPIC has the authority to order that further investigations be carried out, the Commission, pursuant to subsection 184(1)(b) can certainly make that same decision.

Accordingly, for these reasons, the Commission finds that the Internal Review decision dated September 14, 2001 shall be varied in the following respects:

1. MPIC shall pay to the Appellant the amount of \$1,086.64 respecting an additional permanent impairment benefit of 1% for the additional two ribs which sustained

fractures as a result of the motor vehicle accident, together with interest on such sum in accordance with Section 163 of the MPIC Act;

2. The determination of the Appellant's entitlement to additional permanent impairment benefits respecting the loss of function of the shoulder, and the loss of function of the thigh or leg, be referred back to MPIC's case manager for investigation and assessment;
3. In all other respects, the decision of MPIC's Internal Review Officer, dated September 14, 2001, be confirmed.

Dated at Winnipeg this 18th day of July, 2003.

YVONNE TAVARES

LAURA DIAMOND

LES MARKS