

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-104**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Wendy Sol
Mr. Wilfred De Graves

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Danielle Robinson.

HEARING DATE: March 8, 2011

ISSUE(S):

- 1. Entitlement to further Permanent Impairment Benefits**
- 2. Entitlement to re-imburement for vehicle modifications**

RELEVANT SECTIONS: Sections 127 and 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act'), Section 10 of Manitoba Regulation 40/94 and Section 1 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, [text deleted], was involved in a motor vehicle accident on August 7, 2003, when she was a pedestrian struck by a motorist. As a result of that accident, the Appellant sustained injuries including a fractured left radius styloid, a left lateral meniscal tear, lacerations/abrasions to bilateral elbows and lacerations to the posterior skull. Due to the bodily injuries which the Appellant sustained in the motor vehicle accident, she became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act.

The Appellant is appealing two Internal Review Decisions to the Commission, as follows:

1. Internal Review Decision dated April 11, 2005 with regards to whether she is entitled to further Permanent Impairment Benefits;
2. Internal Review Decision dated September 15, 2005, with respect to whether she is entitled to reimbursement for vehicle modifications or for a replacement vehicle.

1. Entitlement to Additional Permanent Impairment Benefits

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.

Schedule A of Manitoba Regulation 41/94 sets out the entitlement for each type of permanent impairment as a percentage of the total amount available.

The Internal Review Decision dated April 11, 2005, confirmed the case manager's decision of December 29, 2004. The Internal Review Decision of April 11, 2005 determined a permanent impairment benefit of 8% as follows:

Impairment	Percentage
Left Knee Ligament Tear	7%
Right Elbow change in form & symmetry	1%
Total	8%

At the appeal hearing, the Appellant submitted she was entitled to additional permanent impairment benefits for the following:

- A. Loss of consciousness/concussion;
- B. Scarring on scalp;
- C. Scarring on left elbow; and
- D. Scarring on right elbow.

A. Loss of Consciousness/Concussion

At the Appeal Hearing, the Appellant submitted additional medical reports from [Appellant's Neurologist] in support of her entitlement to a permanent impairment benefit for loss of consciousness/concussion. Counsel for MPIC requested an adjournment in order to have the medical reports from [Appellant's Neurologist] reviewed by MPIC's Health Care Services Team. The Commission granted MPIC an adjournment in order to allow MPIC's Health Care Services Team to review and respond to the reports from [Appellant's Neurologist]. Accordingly, the issue respecting the Appellant's entitlement to a permanent impairment benefit for loss of consciousness/concussion shall be adjourned. If this matter is not settled between the parties, either party may advise the Commission accordingly, and an appeal hearing will be reconvened in order to determine this issue.

B. Scarring On Scalp

The Appellant submits that she is entitled to an award for scarring on her scalp due to the disfigurement resulting from the sutures to her scalp following the accident. The Appellant also maintains that she has a bump on her skull as a result of the accident. She argues that this disfigurement should also qualify for a permanent impairment

benefit. In total, the Appellant claims that she is entitled to an additional impairment award of 4% for keloid tissue and scarring of the scalp.

Counsel for MPIC submits that the Appellant is not entitled to an award for scarring of the scalp as there was no conspicuous scarring noted on the back of her scalp.

Upon a review of all of the documentary evidence before it, the Commission finds that the Appellant is not entitled to a permanent impairment benefit for the inconspicuous scarring to her scalp. Table 13.3 of Division 13 of Manitoba Regulation 41/94 provides for Evaluation of Disfigurements for the scalp and skull. The Table only provides for awards for conspicuous scarring to the scalp and skull. The Commission finds that an inconspicuous scar on the scalp and skull does not qualify for an impairment benefit pursuant to Table 13.3 of Manitoba Regulation 41/94.

C. Left Elbow Scar

The scarring to the Appellant's left elbow totalled 0.8 cm² which equated to an award of 0.4% as per Table 13.3 of Manitoba Regulation 41/94. The Internal Review Officer in her decision of April 11, 2005 determined that awards less than 0.5% are rounded down and therefore the Appellant's award for left elbow scarring was calculated as 0%.

At the appeal hearing, the Commission noted its previous decision in the Appeal by *[text deleted]*, AICAC file #AC-05-210. In its Reasons For Decision at page 5, the Commission determined that, "The case manager should not have reduced the

impairment benefit for the Appellant's scarring of his right posterior trunk. The impairment benefit is clearly set out in the regulations and MPIC is not entitled to reduce a statutory benefit pursuant to an internal administrative policy of convenience or otherwise." The Commission finds that the Appellant is entitled to a permanent impairment benefit of 0.5% in accordance with Table 13.3 of Division 13 for the left elbow scar, together with interest on this sum from the date of the motor vehicle accident to the date of payment.

At the appeal hearing, counsel for MPIC consented to this award.

D. Right Elbow Scar

The Internal Review Officer in her decision of April 11, 2005 found the following with respect to the scarring to the Appellant's right elbow:

The scarring to your right elbow totaled 1.26 cm² which provided an entitlement of 0.63%. A change in form and symmetry was noted which provided entitlement of 1%. Regulation 41/94, Part 2, Division 3, Item 3, states where there is both alterations in form and symmetry and scarring, the higher of the two percentages obtained under either heading is awarded, up to the maximum impairment percentage prescribed for that part of the body. As you sustained both scarring and change in form and symmetry to your right elbow, the greater of the two awards applies, or 1%.

The Commission finds that MPIC correctly applied the provisions of Subdivision 2 of Division 13 of Manitoba Regulation 41/94 relating to scarring and disfigurement of the elbow. As a result we find that the Appellant has received the correct award for scarring of the right elbow. The Commission has no discretion to change the impairment award set out in the Schedule of Permanent Impairments, and therefore the impairment benefit of 1% is confirmed.

2. Entitlement to reimbursement for vehicle modifications or vehicle purchase

The Internal Review Decision of September 15, 2005 confirmed the case manager's decision of June 13, 2005 that the Appellant was not entitled to a refund for her replacement vehicle as a result of her motor vehicle accident of August 7, 2003.

Following the motor vehicle accident, the Appellant replaced her standard transmission vehicle with an automatic transmission vehicle. The Appellant maintained that her left leg injury prevented her from operating a standard transmission vehicle. She requested that MPIC cover the cost of replacing her vehicle. The Internal Review Officer in her decision of September 15, 2005 found that:

[Case Manager] was quite right to quote to you Section 10(1)(a) of Manitoba Regulation 40/94 which does provide funds for the adaptation of a motor vehicle when Manitoba Public Insurance considers it necessary, or advisable, for your rehabilitation. This consideration could not take place under the circumstances of your not contacting MPI. Further, Section 10(2) of the same Regulation states that before a claimant incurs any expense with respect to rehabilitation, that MPI may require that you submit information which it considers necessary. No information was forthcoming before you made this expense and there is no way to ascertain at this point in time what options were open to MPI in October of 2003 when you replaced your vehicle. As a result, this expense will not be funded by MPI and I am confirming [Case Manager's] decision of June 13, 2005.

Relevant Legislation

Section 10(1)(a) of Manitoba Regulation 40/94 provides as follows:

Rehabilitation expenses

10(1) Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:

(a) funds for an extraordinary cost required to adapt a motor vehicle for the use of the victim as a driver or passenger;

Consent of corporation required

10(2) Unless the victim first obtains the consent of the corporation prior to incurring an expense under subsection (1), the corporation is not liable for paying it.

Corporation may require information

10(3) Before making any payment under subsection (1), the corporation may require the victim to provide the corporation with any information that the corporation reasonably requires for the purpose of this section, and the victim must provide that information.

Upon a careful review of all of the documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to reimbursement of the expenses incurred in replacing her vehicle, for the following reasons:

1. The evidence before the Commission was clear that the Appellant did not obtain MPIC's approval prior to purchasing the replacement vehicle. Section 10(2) of Manitoba Regulation 40/94 provides that "Unless the victim first obtains the consent of the corporation prior to incurring an expense under subsection (1), the corporation is not liable for paying it." In this situation, it is clear that pre-authorization from MPIC was required prior to incurring the expense and as a result the Commission finds that MPIC is not responsible for the expenditure.
2. The Commission finds that subsection 10(1) of Manitoba Regulation does not provide for reimbursement of the purchase price of a vehicle. Rather, upon a plain reading of the legislation, that subsection only allows for funds to adapt an existing motor vehicle. If there had been an intention to provide for the acquisition of a vehicle as well as the adaptation, the legislative drafters certainly would have included that within the scope of subsection 10(1)(a).

3. There was insufficient information in order to allow the Commission to assess whether vehicle modifications were necessary or advisable for the Appellant immediately after her motor vehicle accident.

As a result, the Commission finds that the Appellant is not entitled to reimbursement of her expenses for replacing her vehicle. Accordingly, the Appellant's appeal is dismissed and the Internal Review Decision dated September 15, 2005 is confirmed.

Dated at Winnipeg this 2nd day of May, 2011.

YVONNE TAVARES

WENDY SOL

WILFRED DE GRAVES