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Indexed as:
E.F. (Re)

IN THE MATTER OF an appeal by E.F.
AICAC File No.: AC-99-35

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[2000] M.A.I.C.A.C.D. No. 3

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Manitoba Automobile Injury Compensation Appeal Commission
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C., and
L. Goodspeed

Heard: January 17, 2000.
Decision: January 19, 2000.
(9 paras.)

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Issues(s):
Quantum of award for facial scarring.

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Relevant Sections:
Sections 126 to 130, inclusive, of the MPIC Act, and
Tables 15 and 17, being part of Manitoba Regulation
No. 41/94.

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Appearances:
Manitoba Public Insurance Corporation ('MPIC') represented by
Joan McKelvey.
The appellant, E.F., was represented by Cathy Sherman.

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MAIC 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

[para1] By the time E.F.'s appeal came before this
Commission, only one issue remained to be determined, namely:
the proper amount to be paid to the Appellant as compensation
for permanent impairment, in the form of scarring to her face
and neck, that she sustained in a motor vehicle accident of
November 16th, 1994.

[para2] The nature of E.F.'s accident and of any other
injuries that she sustained in the course of it are not

material to this appeal. What are relevant are the descriptions of the five scars that she sustained and the proper application of Manitoba Regulation 41/94 to those scars.

DESCRIPTION OF IMPAIRMENT:

[para3] MPIC referred E.F. to Northern Rehabilitation & Consulting Services Inc. for an assessment of her facial scarring. The assessment was performed on May 27th, 1997 by Mr. Victor Andres, who is a registered nurse and rehabilitation consultant. He described five scars which, adopting both Mr. Andres's description and that of Dr. Marshall Stitz (MPIC's medical consultant) may be summarized this way:

- Area A a "Y"-shaped flat linear scar at the medial end of the right eyebrow, unobscured by hair, measuring 2.0 plus 0.5 centimeters in length and 0.5 centimeters in width, having a resultant surface area of 1.25 square centimeters.
- Area B a flat, diagonal, linear scar on the right upper eyelid, noticeable whether the eye is open or closed, measuring 1.5 centimeters in length by 0.1 centimeter in width, with a resultant, surface area of 0.15 square centimeters.
- Area C a diagonal, depressed, linear scar on the right lower eyelid, measuring 1 centimeter in length by 0.2 centimeters in width, with a resultant surface area of 0.2 square centimeters and classified as 'faulty'.
- Area D a conspicuous, irregular, depressed scar measuring 4 centimeters in length by 0.1 centimeter in width on the right side of the bridge of the nose, having an additional component measuring another 1 centimeter in length. The resultant surface area is 0.5 square centimeters and the scar is properly classified as 'faulty'. Mr. Andres also notes that this scar causes "an asymmetrical appearance" to the nose.
- Area E a faint, inconspicuous, flat scar, having a surface area calculated at 1.0 square centimeters, described by Mr. Andres as being on the underside of the Appellant's left jawbone and by Dr. Stitz as being on the neck. Mr. Andres adds that this scarring is "not

Add, for change in form and symmetry involving two anatomical elements	12.00%
	15.50% *
Area E, Table 17 (neck)	1.00%
	16.50%

(* Since the maximum award for facial disfigurement is 15%, the claim advanced on behalf of E.F. is reduced to 16%.)

[para7] With deference, we do not interpret the Regulations in quite the same way. As we read the reports of Mr. Andres and of Dr. Stitz as well as a report of Dr. W. Reid Waters, plastic surgeon, of March 17th, 1997 (".....with regard to your request regarding evaluation for physiognomy, I would think she is a Class 4 affecting one anatomical element, i.e. her nose") and having had the benefit of seeing E.F. in person, we cannot conclude that the scarring of her upper and lower right eyelids constitute a "conspicuous change that hold one's attention" nor even, merely, a "conspicuous change". There is a distinction between a cicatricial, or scarring, impairment on the one hand, and a change in form and symmetry on the other. From Mr. Andres's description, there is no doubt that the nasal scarring has produced a conspicuous change that holds one's attention, bringing that aspect of E.F.'s claim within subparagraph A of Class 4 in Table 15 and resulting in the 10% award. The same cannot, in our respectful view, be said of the scarring to the eyelids. In the latter case, E.F. has been awarded 1% per square centimeter for the flat scar on her right upper eyelid, and 3% per square centimeter for the faulty scar on the lower eyelid. At the same time, and although E.F. may be conscious of their existence when she looks for them in the mirror, the fact is that the scars on her eyelids did not present a conspicuous change in form and symmetry to the members of this panel who observed her at a distance of about ten feet, nor even to Mr. Andres and Dr. Waters, who presumably examined her very closely. Counsel for the Appellant argues that Dr. Waters was only examining E.F.'s nose and, hence, only spoke of the "one anatomical element". With deference, the very language of his letter indicates that he was not only offering an opinion about possible plastic surgery to correct the Appellant's nasal problem but, as well, was responding to a specific request for an "evaluation for physiognomy" and obviously had a copy of Table 15 before him, since he refers in particular to Class 4.

[para8] Whether the scar on the underpart of E.F.'s jaw is

described as 'neck' or 'underside of left jawbone' is not material. It creates no change in form or symmetry and the award is, therefore, 1% in either case.

DISPOSITION:

[para9] It follows, then, that E.F.'s award for physiognomy impairments were properly calculated, and that her appeal must be dismissed.

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