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Indexed as:
R.S. (Re)

IN THE MATTER OF an Appeal by R.S.
AICAC File No.: AC-00-63

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[2001] M.A.I.C.A.C.D. No. 30

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Manitoba Automobile Injury Compensation Appeal Commission
Y. Tavares, (Chairperson), L. Diamond and L. Cox
Heard: October 2, 2000.
Decision: September 20, 2001.
(16 paras.)

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Issues(s):

Assessment of Permanent Impairment Benefits

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Relevant Sections:

Section 127 of The Manitoba Public Insurance Corporation
Act (the "MPIC Act") and Manitoba Regulation 41/94
of the MPIC Act.

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Appearances:

The Appellant, R.S., appeared on his own behalf.
Manitoba Public Insurance Corporation ("MPIC") was represented
by Ms. Joan McKelvey.

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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] On July 22, 1994, the Appellant was a passenger in a vehicle involved in a near-head-on collision. As a result of the accident, he was hospitalized for about 4 days and he sustained a fractured sternum and several rib fractures. In early February 1995, the Appellant began experiencing severe back pain, and in May 1995, a disc herniation at L5-S1 was detected. As a result of those injuries, 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

March 22, 2000 with respect to the assessment of permanent impairment benefits by MPIC.

[para2] 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.

[para3] The regulations set out the amount available for each type of permanent impairment as a percentage of the total amount available.

[para4] The Internal Review decision dated March 22, 2000, confirmed the Adjuster's decision of September 20, 1999, which had determined a total permanent impairment benefit of 2%. This impairment benefit had been calculated as follows:

- * Misalignment of fractured sternum: 1%
- * Change in form and symmetry of sternum: 1%

Total: 2%

[para5] The total of 2%, when applied against the \$100,000.00 maximum impairment benefit payable (1994) translates into a total impairment benefit in the amount \$2000.00.

[para6] The Adjuster's decision had been based upon an Inter-Departmental Memorandum from Dr. Marshall Stitz, medical consultant of the MPIC Claims Services Department. In this memorandum, Dr. Stitz set out his opinion with respect to the permanent impairment benefits related to the Appellant's injuries. Dr. Stitz evaluated the Appellant's permanent impairment in accordance with the Manitoba Public Insurance Schedule of Permanent Impairments (the "Schedule"), which is Regulation 41/94 to the MPIC Act.

[para7] Pursuant to Part One; Division One; Subdivision One; Item 2(b)(i) of the Schedule, an award of 1% is applicable when there is "pseudarthrosis or misalignment" of the sternum. There is no award range in the Schedule and accordingly, 1% is the maximum amount which could be awarded for a misalignment resulting from a fractured sternum.

[para8] An additional permanent impairment benefit was also applicable to R.S. resulting from the disfigurement of the chest. Pursuant to Part Two; Division Three; Table 17 of the Schedule, a minor or moderate disfigurement of the trunk rates an impairment benefit of 1-3%. As the description of the

disfigurement on file was considered mild, a permanent impairment benefit of 1% was awarded. Having regard to Dr. A. Arneja's report of July 16, 1999, wherein he describes the deformity caused by the sternum fracture as mild, we concur with the 1% permanent impairment benefit applied by MPIC with respect to R.S.'s disfigurement of the chest.

[para9] In the Inter-Departmental Memorandum dated February 28, 2000, Dr. Marshall Stitz refers to the possibility of a respiratory impairment. Since insufficient evidence was available, Dr. Stitz recommends that pulmonary function testing would be helpful in order to properly determine if there is respiratory dysfunction due to the injury sustained in the motor vehicle accident. He further recommends that R.S. may require an assessment by a chest medicine specialist in order to verify whether such an impairment exists. Accordingly, this matter shall be referred back to MPIC's Case Manager in order to determine whether a permanent impairment benefit for a respiratory impairment resulting from the motor vehicle accident is applicable for R.S.

[para10] R.S. is also claiming a permanent impairment benefit in regard to the L5-S1 disc herniation and S1 radiculopathy which was detected in May of 1995. MPIC has denied his claim for permanent impairment benefits relating to the disc herniation and S1 radiculopathy on the basis that there is no objective medical evidence to support an ongoing causal relationship between the motor vehicle accident of July 22, 1994 and R.S.'s low back pains which did not become severe until February 1995.

[para11] R.S. submits that the L5-S1 disc herniation and S1 radiculopathy were caused by the motor vehicle accident of July 22, 1994. He argues that he had no back pain prior to the motor vehicle accident, but since the motor vehicle accident, he has experienced lower back pain. However, because the pain in his chest was greater, his complaints to his caregivers centred on those injuries, rather than on his back. Further, he argues that the minimal amount of activity which he performed since the motor vehicle accident, including minor snow shovelling, would not have caused the necessary strain to bring upon the disc herniation.

[para12] In support of his position, R.S. submitted the report of Dr. A. Arneja, a physiatrist who had been treating R.S. since July 5, 1995. In his report dated June 16, 2001, Dr. Arneja comments that:

[R.S.], in the accident of July 22nd, 1994, suffered fractured sternum and fracture of several ribs and he was hospitalized for 4 to 5 days. At that time, he also suffered back injury, but major focus of treatment and worry was his rib fractures and sternum fracture. He did

not experience much back pain because he was resting and laying in bed, but as he started doing activities, he started experiencing back pain which indicated that he had some degree of disc injury in the form of injury to the annulus fibrosis. The regular activities and snow shovelling caused further increases in intra-discal pressure, possibly leading to disc herniation and possibly extension of the disc components in to the lateral recess on the right side at L5-S1 level causing spinal stenosis, which is further manifested by the neurogenic claudications which he was experiencing if he walks more than one block. It is a well known fact that those patients who tear their annulus fibrosis are prone to develop disc herniation after doing any repetitive bending, twisting, lifting activities. In the case of [R.S.], he resumed his regular activities and did snow shovelling and this possibly caused further increase in inter-discal pressure and further tear of the nucleus fibrosis and disc herniation causing right S1 nerve root compression; this clinical finding was further supported by CT Scan dated March 23rd, 1997 done at the Health Sciences Centre.

This sequence of events explains that [R.S.] injured his L5-S1 disc in the motor vehicle accident which led to further compression forces on the annulus fibrosis as time went on causing further tear and disc herniation. These sequence of events explains the cause and effect relationship between the motor vehicle accident and the disc herniation and radiculopathy.

[para13] Counsel for MPIC submits that the disc herniation was not caused by the motor vehicle accident of July 22, 1994. She argues that if the disc herniation was directly attributable to the motor vehicle accident, one would expect that the back pain and radicular symptoms would have been more severe so as to cause the Appellant to complain sooner than February 1995. She further argues that the classic mechanism which results in a lumbosacral disc herniation is a flexing and twisting type of mechanism, without the necessary significant forces. A simple sneeze or the bending to tie one's shoe can, and often does, result in a disc herniation. Further, the classic pain associated with the disc herniation is radicular into the leg. The temporal relationship in the medical evidence in this case is indicative that the radicular symptoms were far removed from the motor vehicle collision, but not from the shovelling of snow in February 1995. Indeed, R.S.'s evidence was that the pain commenced after the shovelling of snow, became worse and was radicular in nature.

[para14] In support of her position, counsel for MPIC submitted an additional Inter-Departmental Memorandum from Dr. Marshall Stitz dated July 17, 2001. In this memorandum, Dr. Stitz commented that:

My opinion, previously documented in the September 28, 2000 review was that it was not medically probable that the motor vehicle collision of July 22, 1994 directly resulted in the diagnosis of a disc herniation in February, 1995. My opinion was based on the medically improbable temporal relationship and the lack of medical findings related to this diagnosis following the motor vehicle collision. The information provided by the attending physiatrist in the recent report does not change my earlier opinions.

The physiatrist referred to a tear of the annulus fibrosis. The annulus is the outer ligament covering of the inter-vertebral disc. There are no specific symptoms or physical findings that are indicative of an annular tear. This condition cannot be confirmed by history or physical examination, but special imaging tests can suggest its presence. An annular tear does not necessarily lead to herniation of an inter-vertebral disc.

In summary, it is still my opinion that it is not medically probable that a cause and effect relationship exists between the motor vehicle collision and the later diagnosis of a disc herniation. There was no information documenting symptoms or physical findings of a disc herniation/radiculopathy until many months after the motor vehicle collision. I had previously suggested that a stronger relationship existed between the reported snow shovelling and the subsequent disc herniation due to the appropriate mechanism of injury and appropriate temporal relationship. This opinion does appear to be consistent with comments made by the attending physiatrist.

[para15] Counsel for MPIC therefore concluded that on the basis of the lack of a temporal relationship and the lack of medical evidence that a causal relationship between the motor vehicle accident and the disc herniation cannot be drawn. The only temporal relationship to the disc herniation and the acute onset of pain was subsequent to an incident of snow shovelling. Further, the lack of acceleration/deceleration forces at the time of the incident are very important in that there was solid holding of the lower back in the seat at the time of impact because of belting. This does not lend itself to the mechanism conducive to herniation unlike twisting, flexing, and rotational forces of activities of daily living such as snow shovelling.

[para16] Upon consideration of the totality of medical evidence before us, and the Appellant's own testimony, the Commission finds that on the balance of probabilities, the chain of causation does not lead us to the conclusion that the motor vehicle accident was the cause of the disc herniation

and radiculopathy. Accordingly, the Appellant would not be entitled to a permanent impairment benefit in respect of the disc herniation and L5-S1 radiculopathy. For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date March 22, 2000.

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