



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by C.K.
AICAC File No.: AC-01-121**

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Antoine Frechette

APPEARANCES: The Appellant, C.K., appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Jim Shaw.

HEARING DATE: May 22, 2002 and June 23, 2003

ISSUE(S): 1. Entitlement to permanent impairment benefits.
2. Entitlement to ongoing therapeutic interventions.

RELEVANT SECTIONS: Section 127 and 136(1) of The Manitoba Public Insurance
Corporation Act (the "MPIC Act"), Section 5(a) of Manitoba
Regulation 40/94 and Section 2 and Schedule A of Manitoba
Regulation 41/94.

**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

The Appellant was involved in a motor vehicle accident on March 26, 1997. As a result of the injuries which she sustained in that accident, the Appellant became entitled to Personal Injury Protection Plan ("PIPP") benefits pursuant to Part 2 of the MPIC Act. The Appellant is appealing the Internal Review decision, dated July 19, 2001, with respect to the following issues:

1. Entitlement to permanent impairment benefits; and
2. Entitlement to ongoing therapeutic interventions.

1. Entitlement to 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.

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 July 19, 2001 confirmed the case manager's decision and dismissed the Appellant's Application for Review. The Internal Review Officer found that the evidence on the file did not support an entitlement to any of the dental impairments set out in the Schedule of Permanent Impairments.

Subsequent to the first hearing date in this matter, Dr. Michael MacKay, Medical Consultant to MPIC's Health Care Services Team, and Dr. Mark Cohen, the Appellant's treating dental specialist, met in order to discuss the Appellant's medical condition. Based on the information provided by Dr. Cohen, in conjunction with a review of the Schedule of Permanent Impairments, Dr. Cohen and Dr. MacKay determined that the Appellant was entitled to the following permanent impairment benefits:

<u>Permanent Impairment</u>	<u>Percentage</u>
Disc Displacement with Reduction (Division 3; Subdivision 1; 1(c)(ii))	2.00%
Craniofacial Muscle Disorder (Myofascial Pain) (Division 3; Subdivision 1; 1(d)(i))	2.00%
Craniofacial Muscular Disorder (Splinting) (Division 3; Subdivision 1; 1(d)(iv))	1.00%

Facial Scarring, Class 2 (Division 2; Table 15)	.04%
Total:	5.04% =====

The Appellant agreed with this latest assessment of permanent impairment benefits, in respect of the 2% award for myofascial pain and the .04% award for facial scarring. However, she disagreed with the permanent impairment benefit calculated by Dr. Cohen and Dr. MacKay, in respect of an entitlement to benefits for the following impairments:

1. Restriction of movement, 10mm reduction of opening - The Appellant maintains that she has sustained a 10mm reduction of opening of her jaw, and is therefore entitled to an impairment benefit of 3%.
2. Laterotrusion - The Appellant relies on Dr. Cohen's report of December 13, 2001, wherein he stated that laterotrusions were slightly restricted and he recommended an impairment benefit of 1%.
3. Disc Displacement with Reduction – The Appellant submits that the medical information on her file supports an award of 3 or 4% as opposed to the 2% assessed by Dr. Cohen and Dr. MacKay.
4. Myositis – The Appellant maintains that there is sufficient evidence of ongoing inflammation of a muscle characterized by pain, tenderness and sometimes spasm. She therefore submits that she should be entitled to a benefit of 1% for myositis.
5. Spasm – The Appellant submits that since she is required to wear a splint to control or correct the spasm of her masticatory muscles, an award of 1% is in order.

6. Splinting – Based on Dr. Cohen’s original recommendation of a 2% award for splinting, and her ongoing requirement to wear a splint full-time, the Appellant argues that an award of 2% is justified rather than the 1% assessed by MPIC.

Counsel for MPIC submits that the permanent impairment assessment of 5.04%, recommended by Dr. Cohen and Dr. MacKay, should be confirmed by the Commission. He maintains that the Schedule of Permanent Impairments was carefully reviewed by Dr. MacKay and Dr. Cohen, and an agreement was reached as to the appropriate benefit to be applied in this case. Based upon the careful examination of this award by the two health care professionals, he contends that there is no reason to disturb the permanent impairment benefit of 5.04% as assessed by Dr. MacKay and Dr. Cohen.

After a careful review of all of the evidence made available to us, both oral and documentary, we find that the Appellant is entitled to a permanent impairment benefit of 5.04%, calculated as follows:

◆ Disc Displacement with Reduction	2.00%
◆ Splinting	1.00%
◆ Spasm	1.00%
◆ Myofascial pain	1.00%
◆ Facial scarring	.04%
Total:	5.04% =====

The Commission finds that the Appellant is not entitled to a permanent impairment benefit for:

1. Restriction of movement of the temporal mandibular articulations, since she does not have a condition in the joint which accounts for the limited movement.

2. Laterotrusion – The restriction of movement is not related to the mechanics of the temporal mandibular joint, therefore no impairment of the temporal mandibular articulations exists.
3. Disc Displacement with Reduction – the award of 2% is a fair award for the Appellant’s temporal mandibular joint dysfunction, since the evidence established that she had very little disc displacement and only a mild restriction of the temporal mandibular joint, due to soft tissue and muscular reasons.
4. Myositis – the evidence established that the Appellant did not have myositis on a permanent basis.

Based upon Dr. Cohen’s evidence, that there was an overlap between the conditions set out under the heading of Craniofacial Muscle Disorder (Part 1, Division 3, Subdivision 1 Section 1(d)), and that many of these conditions could be included as part of myofascial pain, the Commission finds that the following is a fair and appropriate award for permanent impairments under the heading of Craniofacial Muscle Disorder:

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|----|-----------------|----|
| 1. | Myofascial Pain | 1% |
| 2. | Spasm | 1% |
| 3. | Splinting | 1% |

Accordingly, the Commission finds that the Appellant is entitled to a permanent impairment benefit in the total amount of 5.04%, together with interest thereon in accordance with Section 163 of the MPIC Act.

2. Entitlement to Ongoing Therapeutic Interventions

The Appellant is seeking ongoing supportive therapy, including physiotherapy, trigger point injections and botox injections, to assist in the management of the ongoing symptomatology arising from her temporal mandibular disorder.

The relevant sections of the MPIC Act and Regulations are as follows:

Section 136 of the MPIC Act provides that:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

Section 5 of Regulation 40/94 provides that:

Medical or paramedical Care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or as prescribed by a physician.

At the hearing of this appeal, the Appellant advised that she had been involved in another motor vehicle accident in September 2002, as a result of which she exacerbated her temporal mandibular disorder. She also advised that she was currently undergoing physiotherapy treatments to assist with the management of that exacerbation. The Commission finds that an assessment of the Appellant's ongoing requirement for physiotherapy is more appropriate in the context of the treatment she is currently receiving as a result of the latest motor vehicle accident.

Accordingly, there is no requirement to order ongoing physiotherapy as a result of the accident of March 26, 1997.

With respect to trigger point injections, based upon Dr. Cohen's assessment, we find that ongoing trigger point injections are medically required to assist the Appellant with the management of her temporal mandibular disorder. Dr. Cohen testified that the Appellant suffers from mild to moderate myofascial pain and that she requires ongoing treatment in the form of physiotherapy and trigger point injections to assist in the management of that condition. The Commission finds however, that there is insufficient evidence to make a finding that botox injections are medically required in the circumstances. Accordingly, the Commission finds that the Appellant is entitled to reimbursement of expenses which she may incur for trigger point injections (although not botox injections) to treat the permanent myofascial pain, which she developed as a result of the motor vehicle accident of March 26, 1997.

As a result, the decision of MPIC's Internal Review Officer dated July 19, 2001 is rescinded, and the foregoing substituted for it.

Dated at Winnipeg this 21st day of July, 2003.

MEL MYERS, Q.C.

YVONNE TAVARES

ANTOINE FRECHETTE