



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by J.D.
AICAC File No.: AC-02-119

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

APPEARANCES: The Appellant, J.D., appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Mark O'Neill.

HEARING DATES: April 7, 2003 and September 15, 2003

ISSUE(S): Entitlement to additional permanent impairment benefits.

RELEVANT SECTIONS: Section 127 of The Manitoba Public Insurance Corporation
Act (the 'MPIC Act') 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, J.D., was involved in a motor vehicle accident on December 23, 1998. As a result of that accident, the Appellant suffered injuries which resulted in permanent physical impairments. Pursuant to Section 127 of the MPIC Act, the Appellant is entitled to a lump sum indemnity as a result of the permanent physical impairments, in accordance with the regulations to the MPIC Act. The Appellant is appealing the Internal Review decision dated October 9, 2002, 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 October 9, 2002, modified the case manager's decision of February 25, 2002. In addition to the 1% benefit for craniofacial muscle disorder/myofascial pain allowed by the case manager's decision, the Internal Review Officer awarded the Appellant a benefit of 2% for joint dysfunction consisting of temporomandibular disc displacement with reduction.

The Appellant seeks additional permanent impairment benefits pursuant to Division 3, Subdivision 1, of the Schedule of Permanent Impairments, for the following impairments, which he maintains he has sustained as a result of the motor vehicle accident:

1. Temporomandibular articulations

(b) Restriction of movement:

- (i) reduction of opening according to the distance measured between free edge of the upper and lower incisors:

(D) 10 mm of lost movement: 3%

- (ii) laterotrusion:

(B) reduction under 50%: 1%

- (iii) protrusion:

(B) reduction under 50%:	1%
(d) Craniofacial muscle disorder:	
(i) myofascial pain:	2%
(iv) splinting:	2%

In support of his position, the Appellant relies on the opinion and testimony of his treating dental specialist, Dr. Mark Cohen. At the appeal hearing, Dr. Cohen testified that the Appellant had sustained a permanent restriction of movement of the temporomandibular articulations. The restriction of movement was apparent in a reduced mouth opening and a reduction in laterotrusion and protrusion. Dr. Cohen also testified that the Appellant suffered from mild myofascial pain, and that Mr. Dyck was experiencing pain, consistent with either spasm or splinting. In his opinion, he would provide a 1% award for splinting, pursuant to the Schedule of Permanent Impairments.

Counsel for MPIC submits that the Appellant has not established that he qualifies for the permanent impairment benefits that he seeks. Relying upon the opinion and testimony of Dr. Randy Mazurat, counsel for MPIC maintains that the Appellant did not sustain the permanent impairment benefits which he is seeking, for the following reasons:

1. Restriction of movement:
 - (i) Reduction of opening – counsel for MPIC submits that according to the Schedule of Permanent Impairments, an individual must sustain at least 10 mm of lost movement in order to qualify for the impairment benefit;
 - (ii) Laterotrusion and protrusion – counsel for MPIC submits that the Appellant’s range of motion for laterotrusion and protrusion are within the normal ranges and therefore there is no permanent impairment; and

- (iii) Craniofacial muscle disorder – counsel for MPIC submits that the Appellant’s myofascial pain is mild and accordingly the award of 1% is justified in the circumstances. He also submits that the Appellant does not have a permanent condition that would qualify for an impairment benefit for splinting.

Accordingly, counsel for MPIC contends that the Appellant is not entitled to any additional permanent impairment benefits and therefore the Internal Review decision dated October 9, 2002 should be confirmed and the appeal dismissed.

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 an additional benefit of 2% for permanent impairment of the temporomandibular articulations, calculated as follows:

(b) Restriction of movement:

(ii) laterotrusion:

(B) reduction under 50%: 1%

(iii) protrusion:

(B) reduction under 50%: 1%

We find that the evidence established that as a result of the motor vehicle accident, the Appellant sustained a restriction of movement of the temporomandibular articulations. The restriction of laterotrusion and protrusion was mild – less than 50% and therefore we find that an award of 1% for each category is appropriate in the circumstances of this case.

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

1. The reduction of opening according to the distance measured between the free edge of the upper and lower incisors of less than 10 mm. We interpret the Schedule of Permanent Impairments to require a minimum of 10 mm of lost movement in order for an entitlement to a permanent impairment benefit to exist.
2. Craniofacial muscle disorder: myofascial pain – the award of 1% is a fair award for the Appellant’s myofascial pain, since the evidence established that the Appellant’s myofascial pain was within the mild ranges.
3. Splinting – the evidence established that the Appellant did not have ongoing and acute spasm on a permanent basis. Therefore, we find that a permanent impairment benefit for splinting would not be applicable in these circumstances.

Accordingly, the Commission finds that the Appellant is entitled to an additional permanent impairment benefit of 2%, together with interest thereon in accordance with Section 163 of the MPIC Act. As a result, the decision of MPIC’s Internal Review Officer dated October 9, 2002 is therefore, varied accordingly.

Dated at Winnipeg this 27th day of October, 2003.

MEL MYERS, Q.C.

YVONNE TAVARES

ANTOINE FRECHETTE