

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by E.R.
AICAC File No.: AC-06-97**

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, E.R., appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: September 19, 2007

ISSUE(S): Whether permanent impairment benefits have been properly assessed and calculated

RELEVANT SECTIONS: Section 127 of *The Manitoba Public Insurance Corporation Act* ('MPIC Act') and Division 1, Subdivision 1, Section 3.5b and Division 13, Subdivision 2, Table 13.3 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 injured in a motor vehicle accident on November 25, 2004. As a result of the accident, she sustained soft tissue injuries to her neck, right shoulder and lower back, as well as a fractured right hand.

The Appellant's permanent impairments were assessed in her home on November 22, 2005 by Jim Caithness, a physiotherapist with Mobile Therapy Services. His report dated November 29,

2005 detailed the active range of motion to the Appellant's right thumb, right hand and wrist, and provided comments and photographs with respect to the deformity of her right thumb.

Mr. Caithness reported right thumb IP: flexion of 45° and MCP: flexion of 35°. He reported that thumb adduction was 1.5cm, thumb radial abduction 75° and thumb opposition measured at 5.5cm.

The Appellant's case manager applied these measurements in an impairment assessment dated December 19, 2005. It was concluded that the Appellant's entitlement was .5% for IP flexion-extension, .5% for MCP flexion-extension, and 2% for opposition, for a total of 3% for range of motion to the loss of hand. It was also determined that the Appellant was entitled to a 2% impairment for a minor change in form and symmetry to the right hand/thumb.

The case manager wrote to the Appellant on January 4, 2006 setting out a 5% permanent impairment award for the right thumb loss of range of motion and right thumb/hand change in form and symmetry.

The Appellant sought Internal Review of this decision.

On May 8, 2006, an Internal Review Officer for MPIC concluded that, based on a review of the file, the permanent impairment award was properly assessed and calculated and that the decision under review had correctly applied the provisions of the legislated permanent impairment schedule.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and submission of the Appellant

The Appellant submitted that she had not been duly compensated for her injury. She testified that she still cannot do anything with her right thumb, and for example, cannot open her grandchildren's baby bottles.

It was the Appellant's view that she deserved more compensation for this.

Referring to the numbers included in Mr. Caithness' assessment, she submitted that these had been the numbers at the time, but later on, now, as she goes along day to day, she is not functioning as she was before and it is getting worse, especially in cold weather when her thumb is quite painful.

Submission for MPIC

Counsel for MPIC referred to Section 3.5b of Division 1, Subdivision 1, of Manitoba Regulation 41/94, as well as Table 13.3 under Division 13, Subdivision 2. He reviewed the measurements provided by Mr. Caithness and submitted that the calculations which the case manager had made and the Internal Review Officer reviewed were correct.

He submitted that the measurement of the Appellant's thumb IP flexion-extension as 45%, fell within Division 1, Subdivision 1, Section 3.5b(a)(iv) at 41 to 70, which resulted in a .5% impairment.

The measurement of thumb MCP flexion-extension of 35° fell within Section 3.5b(b)(iii) at 31 to 50 for an additional .5% entitlement.

The measurement of thumb adduction at 1.5% fell under Section 3.5b(c)(v) at less than 2cm for a zero percent entitlement.

The measurement of 75° of thumb radial abduction fell under Section 3.5b(d)(iv) at greater than 40 for a zero percent entitlement.

The measurement of 5.5cm for thumb opposition fell under Section 3.5b(e)(ii) at 6cm for a 2% entitlement.

The Appellant's "mild" change in form and symmetry fell under Division 13, Subdivision 2, Table 13.3 as a minor or moderate change to form and symmetry of the wrists and hands, for a 2% entitlement.

Counsel for MPIC submitted that accordingly, based upon the information which was submitted at the time of the impairment assessment, the Appellant's impairments had been correctly assessed and the Internal Review Officer's decision was correct.

In regard to the Appellant's argument that her condition was worsening, counsel for MPIC pointed out that the current appeal before the Commission is based upon what was before the case manager and Internal Review Officer at the time the assessment and review decisions were made. If the Appellant believes that her function has now worsened, she can speak to her case manager and request that a new assessment be done, so that if there has been some further incremental loss of range of motion, she may then be compensated for it.

Discussion

MPIC Act:

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.

Manitoba Regulation 41/94, Division 1, Subdivision 1, includes the following provisions:

3.5b Range of motion loss of the hand

(a) thumb IP flexion-extension:

Combined range motion: Normal total range of motion for this plane is 80 degrees.

...

(iv) 41 to 70.....0.5%

(b) thumb MCP flexion-extension:

Combined range of motion: Normal total range of motion for this plane is 60%.

...

(iii) 31 to 50.....0.5%

(c) thumb adduction:

This motion is evaluated by measuring the distance in centimeters from the flexor crease of the IP joint of the thumb to the distal palmar crease overlying the MCP joint of the small finger.

...

(iv) less than 2 cm.....0%

(d) thumb radial abduction:

Combined range of motion: Normal total range of motion for this plane is 50 degrees.

...

(iv) greater than 40.....0%

(e) thumb opposition:

This motion is evaluated by measuring the distance in centimeters from the flexor crease of the IP joint of the thumb to the distal palmar crease overlying the MCP joint of the middle finger.

(ii) 6 cm.....2%

Manitoba Regulation 41/94, Division 13, Subdivision 2, Table 13.3, includes the following provision:

Body Region	Alteration in Form and Symmetry	Scarring	Maximum Impairment Rating
Wrists and hands	Minor or moderate change	2%	Conspicuous 1.0%/cm ² 6%
	Severe change	6%	

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officer was not correct in finding that the permanent impairment award was properly assessed and calculated.

The Commission has reviewed the material on the Appellant's file along with her testimony at the hearing and the submissions of the Appellant and counsel for MPIC.

The Commission has concluded that the Appellant has failed to meet the onus upon her of showing that the Internal Review Officer erred in her decision. The calculations of the Appellant's assessed permanent impairment benefits are supported by the report of Mobile Therapy Services and the provisions of the statute and regulations.

Accordingly, the decision of the Internal Review Officer dated May 8, 2006 is confirmed and the Appellant's appeal dismissed.

Dated at Winnipeg this 3rd day of October, 2007.

LAURA DIAMOND