

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by G.R.
AICAC File No.: AC-07-78

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Sheldon Claman
Dr. Patrick Doyle

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

HEARING DATE: May 29, 2008

ISSUE(S): Whether permanent impairments were properly assessed

RELEVANT SECTIONS: Sections 127 and 129 of *The Manitoba Public Insurance Corporation Act* (the 'MPIC Act') and Section 1 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 August 25, 2005. As a result of the injuries which he suffered in that accident, 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 April 24, 2007 with regards to the permanent impairment benefits as determined 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 April 24, 2007, confirmed the case manager's decision of October 23, 2006, which had determined a total permanent impairment benefit of 6.65%. This impairment benefit had been calculated as follows:

INJURY/IMPAIRMENT	PERCENTAGE
Facial Scarring	1.67%
Left Knee Scarring	1.98%
Loss of flexion/extension range of motion at the right shoulder	2%
Loss of range of motion at the right elbow	1%
TOTAL	6.65%

At the appeal hearing, the Appellant raised concerns with respect to his entitlement to permanent impairment benefits in connection with his facial scars. The Appellant submits that the scar referred to as scar #6 was not measured correctly and he claims that scar #6 actually measures 1.3 cm x 0.6 cm for an area of 0.78 cm². He therefore maintains that he should be compensated on the basis of 0.78 cm² for scar #6 (and not 0.39 cm² as awarded by the case manager). Further, the Appellant submits that he is entitled to an impairment benefit for his facial scars due to an alteration in form and symmetry. The Appellant argues that scar #6 runs across the eyebrow causing a loss of hair growth, leaving the right eyebrow shorter than the left and affecting the

symmetry of the eyes and brows. The Appellant therefore submits that he should be entitled to additional permanent impairment benefits in respect to this facial scar due to an alteration in form and symmetry.

Counsel for MPIC submits that the facial scars in question have been properly assessed and rated pursuant to the Schedule of Permanent Impairment Benefits and that the Appellant has received his full entitlement to permanent impairment benefits. Further, counsel for MPIC maintains that the Appellant is not entitled to an impairment benefit for “alteration in form and symmetry”. He argues that this category has no application to the Appellant’s case because there is no evidence of an alteration in form and symmetry in relation to any of the Appellant’s facial scars. Counsel for MPIC contends that the mere presence of a scar does not lead to a finding of an “alteration in form and symmetry”. Further, he claims that nothing in the evidence suggests any “change in tissue bulk, consistency, length or texture” with respect to any of the Appellant’s facial scars. Accordingly, counsel for MPIC maintains that the Appellant’s permanent impairment benefits have been properly assessed in accordance with the MPIC Act and regulations. As a result, he submits that the appeal should be dismissed and the Internal Review decision dated April 24, 2007 confirmed.

Subdivision 1 of Division 13 of the Schedule of Permanent Impairments sets out the permanent impairments applicable to the skin. Section 2 of Subdivision 1 sets out the impairment rating procedure for facial disfigurement. Pursuant to Section 2.1, the degree of facial disfigurement is first classified in terms of its physical appearance, in order to determine the appropriate impairment class. Section 2.2 then provides that for disfigurement classes 1-4, the impairment percentage for disfigurement is fixed with respect to scarring and the alterations in form and symmetry, up to a maximum impairment percentage for disfigurement prescribed for each class.

Section 2.3 provides that where there is evidence of both scarring and alterations in form and symmetry, both impairments are rated and the percentages for both are added up to the maximum percentage prescribed for that class.

Upon a careful review of all of the medical, paramedical and other reports and documentary and oral evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that:

1. The permanent impairment benefits for scars numbered 1, 4 and 5 have been properly assessed and rated pursuant to the Schedule of Permanent Impairment Benefits.
2. The measurements taken by the occupational therapist of scar #6, being 0.3 cm in width and 1.3 cm in length are appropriate. We find that the occupational therapist was in the best position to measure the scars, being an independent examiner. The Commission notes that it may often be difficult to assess boundaries for a scar and given that the occupational therapist is an independent examiner, she provided an impartial determination of the limits of the scar. Additionally, we are mindful that the scars may be difficult to measure and that measuring scars is not necessarily an exact and precise science. Further, we have also considered that seven (7) out of the eight (8) measurements that the occupational therapist took (in respect of the Appellant's other facial scars) were acceptable. We therefore find that her measurements are on a balance of probabilities appropriate in the circumstances. Accordingly, we find that scar #6 was appropriately rated as a Class 3 minor impairment and awarded one (1%) percent per cm² for a flat scar and measured as 0.39 sq. cm.
3. The Appellant is entitled to an additional permanent impairment benefit in relation to the alteration in form and symmetry arising from scar #6. Pursuant to the definitions set out in Division 13 of the Schedule of Permanent Impairments, "alteration in form

and symmetry” means a skin disfigurement that results in a change in tissue bulk, consistency, length or texture. It does not refer to the presence of a scar. Scar #6 runs across the eyebrow causing a loss of hair growth and leaving the right eyebrow shorter than the left. Also, it affects the symmetry of the eyes and the brows. The Commission therefore finds that the change to the eyebrows results in an alteration in form and symmetry pursuant to Division 13 since the texture of the skin and eyebrows has been altered. Pursuant to Table 13.1, the Commission finds that this alteration in form and symmetry is a Class 3 minor impairment. It is a conspicuous change that affects more than two (2) anatomical elements, being the forehead, the orbit and the nose. Accordingly, the Commission finds that the Appellant is entitled to a permanent impairment benefit of seven (7%) percent in accordance with Table 13.1 of Division 13 for a Class 3(c) alteration in form and symmetry which is a minor impairment and a conspicuous change that affects more than two (2) anatomical elements (this award shall be subject to the maximum impairment percentage for disfigurement for Class 3). The Appellant shall be entitled to interest on this sum from the date of the motor vehicle accident, to the date of payment.

Dated at Winnipeg this 23rd day of July, 2008.

YVONNE TAVARES

DR. SHELDON CLAMAN

DR. PATRICK DOYLE