

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: December 1, 2008

ISSUE(S): Whether permanent impairments were properly
assessed

RELEVANT SECTIONS: Sections 127 and 129 of The Manitoba Public Insurance
Corporation Act ('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

In its decision dated July 23, 2008, the Commission determined that G.R. was entitled to a permanent impairment benefit of seven (7%) percent in accordance with Table 13.1 of Division 13 of the Schedule of Permanent Impairments, for the facial disfigurement he sustained in the motor vehicle accident of August 25, 2005. This award was subject to the maximum impairment percentage of seven (7%) percent for a Class 3 facial disfigurement.

On August 7, 2008, MPIC's case manager wrote to the Appellant to advise him that a cheque in the amount of \$7,517.22 representing a permanent impairment entitlement of 5.35% would be forwarded to him under separate cover. The Appellant is challenging that decision on the basis that he should receive an additional .58% for his Class 2 scars in addition to the seven (7%) percent awarded for the Class 3 scars. He submits that the MPIC Act provides for payment of the maximum permanent impairment entitlement for each class of scar.

As the Commission retained jurisdiction in this matter in its decision dated July 23, 2008, the parties agreed that, since this issue arose out of the implementation of that decision, the matter would simply be referred back to the Commission for final determination without proceeding to the Internal Review Office.

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 in accordance with Section 2.1 of Subdivision 1 of Division 13 of the Schedule of Permanent Impairments, the Appellant's facial disfigurement is classified as a whole and all scarring is paid under the highest class. In this case, all of the Appellant's scars were paid as Class 3 scars and the Appellant has received the maximum impairment percentage of seven (7%) percent for a Class 3 facial disfigurement. The Appellant is not entitled to an additional .58% for the scars which were determined to be Class 2 scars since those scars were correctly subsumed under the Class 3 classification.

Accordingly, the Commission finds that the Appellant has received the appropriate permanent impairment award for his Class 3 facial disfigurement.

Dated at Winnipeg this 8th day of December, 2008.

YVONNE TAVARES

DR. SHELDON CLAMAN

DR. PATRICK DOYLE

* **Please see attached Notice.**

Notice

Appeal to Court of Appeal on Question of Law or Jurisdiction

Appeal to Court of Appeal

187(1) The Appellant or the Corporation may appeal the decision of the Commission to The Court of Appeal.

Appeal with Leave

187(2) An appeal under Subsection (1) may be taken only on a question of jurisdiction or of law and only with leave obtained from a Judge of The Court of Appeal.

Application for Leave to Appeal

187(3) An application for leave to appeal shall be made within 30 days after the Applicant receives a copy of the decision of the Commission, or within such further time as the Judge allows.

Commission Entitled to be Heard

187(4) The Commission is entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal.

Order of Commission Stayed

187(5) An appeal from a decision of the Commission stays the decision pending the hearing of the appeal, unless a Judge of The Court of Appeal orders otherwise.

Powers of Court on Appeal

187(6) The Court of Appeal on hearing the appeal may

- (a) make any decision that in its opinion ought to have been made;
- (b) quash, vary or confirm the decision of the Commission; or
- (c) refer the matter back to the Commission for further consideration in accordance with any direction of the Court.

Decision Not Subject to Appeal to Court

188 Except as provided in this Part, a decision of the Corporation or the Commission is final and binding and not subject to appeal or review by a Court.