

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-58**

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Laura Diamond
Mr. Bill Joyce

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

HEARING DATE: December 9, 2002

ISSUE(S): Entitlement to additional Permanent Impairment Benefits.

RELEVANT SECTIONS: Sections 127 and 129 of The Manitoba Public Insurance Corporation Act (the "MPIC Act") and Section 2 and Schedule A of Manitoba Regulation 41/94.

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

The Appellant was involved in a motor vehicle/pedestrian accident on December 22, 1997. 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 February 5, 2001, 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 case manager's decision dated February 25, 1999 determined that the Appellant did not qualify for a permanent impairment benefit for loss of range of motion to his left hip, knee or ankle. The Internal Review decision dated February 5, 2001 varied the case manager's decision and awarded a 2% permanent impairment benefit to the Appellant as a result of abnormal healing of the left femur and left tibia. The Appellant had also previously received a permanent impairment benefit of 8% relating to the scarring of his left leg by letter dated September 21, 1998.

As a result of the hearing which took place on December 9, 2002, an additional impairment assessment of the Appellant was undertaken by a physiotherapist. As a result of this assessment, it was determined that the Appellant had a 2cm atrophy of his left thigh and a 1.5cm atrophy of his left calf. Pursuant to Part 1, Division 1, Subdivision 2, Items 11(q)(i) and (ii), the Appellant was awarded an additional permanent impairment benefit of 4% for the thigh and calf muscle atrophy.

To date, the Appellant has received the following permanent impairment benefits:

1.	Scarring of the left lower limb	8%
2.	Abnormal healing of the left femur and the left tibia	2%
3.	Loss of function of the thigh or leg (muscle atrophy)	<u>4%</u>
	TOTAL:	14%

The issue which arises on this appeal is whether the Appellant is entitled to any additional permanent impairment benefits arising from the injuries which he sustained in the motor vehicle accident of December 22, 1997.

The Appellant has received the maximum award for loss of function of the thigh or leg due to the atrophy of his thigh and calf muscles. There is no authority for the Commission to award a greater percentage for a permanent impairment than that set out in the Schedules. Accordingly, this permanent impairment benefit is confirmed. If this amount has not already been paid to the Appellant, the Commission orders that the Appellant is entitled to an additional permanent impairment benefit of 4% for the thigh and calf muscle atrophy, together with interest on such sum, in accordance with Section 163 of the MPIC Act.

The 2% permanent impairment benefit which was awarded as a result of the abnormal healing of the left femur and the left tibia was based upon the proposed revisions to the MPI Schedule of Permanent Impairments. MPIC determined that the Appellant was entitled to an impairment benefit of 2% using the proposed revisions as a guideline in accordance with Section 129(2) of the MPIC Act, which provides as follows:

Evaluation of permanent impairment under schedule

129(2) The corporation shall determine a percentage for any permanent impairment that is not listed in the prescribed schedule, using the schedule as a guideline.

The Commission is satisfied that this is a fair and appropriate award in the circumstances of this

case.

The Report dated January 14, 2003 from [text deleted], states that the left leg is 0.5cm longer than the right leg. Counsel for MPIC submits that according to Subdivision 2, Item 11(p), the leg length discrepancy has to be more than 1cm before an award is payable. He submits that the proper inference to be drawn from Item 11(p) is that a leg length discrepancy of less than 1cm is not an impairment and does not attract a benefit. Upon a review of the Schedule of Permanent Impairments, the Commission finds that a leg length discrepancy of less than 1cm is not an impairment and does not attract a permanent impairment benefit.

Part 2 of the Schedule of Permanent Impairments provides permanent impairment benefits for disfigurement. Section 3 of Division 3 provides as follows:

**Division 3
Disfigurement of Other Parts of the Body**

3. Where there are both changes in the form and symmetry and scarring, the higher percentage obtained under either heading is awarded, without exceeding the maximum percentage prescribed for that part of the body, according to Table 17.

**Table 17
Evaluation of Impairments to Other Parts of the Body**

Parts of the body	Change of form and symmetry	Cicatricial impairment
Trunk	Minor or moderate change: 1 to 3% Severe change: 6% The maximum percentage of disfigurement for the trunk (front and back) is 12%	Conspicuous Impairment: 0.5%/cm ²
Lower limbs	Minor or moderate change: 1 to 4%	Conspicuous

Impairment: 1%/cm²

Severe change: 8%

The maximum percentage of
disfigurement for the lower limbs
is 16%

The Appellant received an impairment benefit of 8% for the scarring sustained to his left lower limb. That is the maximum amount provided for "severe change" to one lower limb. The Report from [text deleted] stated that there was a depression which measured approximately 13.0 x 5.0 cm and approximately .8 cm deep in the Appellant's left lateral hip. In order to determine whether there is an entitlement for an additional permanent impairment benefit arising from the change of form and symmetry to the Appellant's left lateral hip, the Commission was required to consider whether or not the hip forms part of the trunk or the lower limb for the purposes of evaluation of impairments under Table 17.

In a previous decision, dealing with the same issue, the Commission held that the buttocks form part of the lower limb. Counsel for MPIC provided medical authority which stated that, "*It is common medical practice based on the teachings of anatomy to refer to the lower extremity as that part of the body beginning at the iliac crest, or the top of the pelvis and traveling inferiorly including the buttock, the thigh, the leg and the foot*". In accordance with medical definition, the Commission finds that for purposes of evaluation of impairments pursuant to Table 17, the hip and buttocks necessarily form part of the lower limbs. As a result, pursuant to Section 3 of Division 3, since the Appellant has already received the maximum award for scarring of his left lower limb, he would not be entitled to an additional permanent impairment benefit arising from the change of form and symmetry to his left lateral hip.

Additional permanent impairment benefits which might be associated with the type of injury

which the Appellant sustained, could include decreased range of motion, instability, or malalignment. The information available to the Commission indicates that there are no abnormalities in any of these areas. The Appellant presented no medical evidence at the hearing of the appeal to indicate otherwise. Accordingly, without any evidence of these types of permanent impairments, there is no basis to award any additional permanent impairment benefits. If evidence of these types of impairments becomes available in the future, the Appellant always has the option of presenting that new evidence to his case manager for a fresh decision as to whether or not a permanent impairment benefit is applicable.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer, bearing date February 5, 2001.

Dated at Winnipeg this 9th day of April, 2003.

YVONNE TAVARES

LAURA DIAMOND

BILL JOYCE