



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-68

PANEL: Mr. Mel Myers, Q.C., Chairman
The Honourable Armand Dureault
Mr. Wilson MacLennan

APPEARANCES: The Appellant, [text deleted], was represented by A.C.;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Morley Hoffman.

HEARING DATE: July 26, 2004

ISSUE(S): Entitlement to a permanent impairment benefit for
neurological damage to right leg and right hand

RELEVANT SECTIONS: Section 127 of The Manitoba Public Insurance Corporation
Act ('MPIC Act') and 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 accident on July 3, 1998. She was a passenger in a motor vehicle that was struck on the right side. She saw her medical physician, [text deleted], on July 15, 1998 in respect of the injuries she sustained in the motor vehicle accident. She reported to [Appellant's doctor] that she received injuries to her neck, lower back as well as a contusion to her right arm and right lower leg. [Appellant's doctor], in a report to MPIC dated February 4, 1999, stated:

At that time there was evidence of resolving contusions of her right arm and right lower leg. There was reduced range of motion of both the cervical and lumbosacral spine. There was tenderness in the trapezius and paracervical spinal muscles bilaterally. Neurological examination was normal.

She was treated with analgesics and physiotherapy. She has responded quite well. Physiotherapy has been completed and the patient has been advised regarding home exercises.

She still complains of lower back pain when sitting for longer than one hour. She finds it easier to stand although she does experience swelling of the right ankle at the end of the day. She notes some grinding of her right wrist as well.

MPIC referred the Appellant for an assessment by [text deleted], a neurologist, who interviewed and examined the Appellant on August 12, 1999. In a report to MPIC dated August 19, 1999 [Appellant's neurologist] stated in his report:

In conclusion, I do not find any evidence of neurological dysfunction. I suspect the problems with the right leg are more mechanical, related to the tenderness and to a certain extent to the swelling. The minimally decreased right hand grip is likely due to the pain in the right shoulder. She certainly has evidence of soft tissue injury as noted but I do not think any evidence of damage to her peripheral nervous system. (underlining added)

MPIC referred the Appellant to [text deleted] to conduct a Functional Abilities Analysis of the Appellant. The purpose of the Analysis was to determine her functional capability to return to work as a seamstress in the near future. The assessment occurred on December 14, 1998. The report dated January 4, 1999 describes a loss of grip strength to the Appellant's right hand.

[Appellant's neurologist], in his report to MPIC dated August 19, 1999 stated that in his examination of the Appellant on August 12, 1999 he noted that "*The minimally decreased right hand grip is likely due to the pain in the right shoulder*".

[Appellant's doctor] provided a report to MPIC dated March 9, 2001. In this report [Appellant's doctor] indicated that:

1. most of the Appellant's ongoing symptoms appear related to her lower back with variable degrees of stiffness and pain, with pain at night and as well pain in her right leg when she is walking.
2. x-rays done of the lumbosacral spine in July of 2000 revealed a mild degree of disc space narrowing at the L5-S1 level which had become apparent since the previous x-ray in 1997.
3. he had referred the Appellant again for another course of physiotherapy and hoped that this would improve her lower back pain.
4. he advised MPIC that other problems the Appellant had related to ongoing depressive symptoms.
5. the Appellant had problems with ongoing right upper quadrant pain which appeared to be musculoskeletal in nature. *"This has been chronic and, on review of my notes, appears to have been present since 1999. It does not appear to have been present at the time I saw her immediately following the motor vehicle accident and thus is not likely related to the motor vehicle accident."*

MPIC requested [text deleted] of MPIC's Health Care Services to calculate the permanent impairment award to the Appellant and [MPIC's doctor] provided two reports to MPIC dated July 18, 2000 and June 28, 2001.

Case Manager's Decision

On July 11, 2001 the case manager wrote to the Appellant and stated:

We had met at your home previously to discuss your permanent impairment assessment process.

[Text deleted] of our Health Care Services Department completed a review of the medical information on your file to June 28, 2001. Based on [MPIC's doctor's] review, we have calculated your permanent impairment payment to be \$2,966.53.

All injuries rated as a permanent impairment receive a percentage according to our Permanent Impairment Schedule. The following is a breakdown of our assessment of your injuries that relate as a permanent impairment.

<u>Permanent Impairment</u>	<u>Percentage</u>
• Concussion	0.5%
• Right leg scarring	1.0%
• Right ankle decreased range of motion	<u>1.23%</u>
• Total:	<u>2.73%</u>

We have arrived at your permanent impairment payment of \$2,966.53 by multiplying the maximum payable in 1998 of \$108,664.00 by 2.73%.

$$\$108,664.00 \times 2.73\% = \$2,966.53$$

I have attached copies of all the relevant information that we considered in making this decision.

If you have any questions about this decision or any other matters concerning your claim, please call me at [text deleted].

Application for Review

The Appellant filed an Application for Review of the case manager's decision dated September 7, 2001. In her Application for Review the Appellant stated that she had not been compensated for neurological injuries sustained to her right side. At the Internal Review hearing the Appellant's son, [text deleted], represented the Appellant who did not attend the hearing. The Internal Review Officer issued an Internal Review decision dated February 13, 2002 confirming the case manager's decision of July 11, 2001 rejecting the Appellant's Application for Review.

In his decision, the Internal Review Officer stated:

REASONS FOR REVIEW DECISION

I met with your son, [text deleted], for your hearing. You did not attend.

Your son insists that you have suffered neurological damage as a result of the July 3, 1998 collision. He refers to an “almost severed” nerve in your right leg and to “almost complete” loss of strength in your right hand. He indicates he is convinced you have suffered nerve damage because of advice received from a physiotherapist. He was not able to supply me with the name of the physiotherapist.

The Internal Review Officer noted that the Appellant raised this matter with the case manager, who sought unsuccessfully to determine who the physiotherapist and medical doctor were at the [text deleted] Clinic who informed the Appellant that she had suffered nerve damage to the right leg area. However, the Internal Review Officer was unable to locate any member of the medical physiotherapy staff at the clinic that would corroborate the Appellant’s statements. The Internal Review Officer further stated:

Furthermore, there are reports on your file from [text deleted], who appears to be the treating family doctor, and from [text deleted], who is a qualified neurologist. Neither of them identified any neurological damage. The Functional Abilities Report dated January 4, 1999 does describe a loss of grip strength in your right hand. [Appellant’s neurologist] concludes that “the minimally decreased right hand grip is likely due to the pain in the right shoulder.” It would not, therefore, arise from neurological damage. In addition, [Appellant’s doctor’s] March 9, 2001 report refers to “ongoing right upper quadrant pain” which he says appears to have been present since 1999. He does not, however, think that this problem is even related to the motor vehicle accident since he saw you immediately following that accident and the problem was not present at that time.

As a result the Internal Review Officer found no reason to do anything but confirm the decision of the case manager and rejected the Appellant’s Application for Review.

The Appellant filed a Notice of Appeal, dated June 19, 2002. In this appeal the Appellant submitted that she had not been adequately compensated for the injuries sustained in the motor vehicle accident. The Appellant asserted that she sustained permanent injuries that MPIC has

not acknowledged, and that these injuries are to her leg and what appears to be neurological damage to her right side.

Prior to the appeal hearing [Appellant's doctor] provided a lengthy narrative report dated February 10, 2003 to the Commission. [Appellant's doctor], however, in this report does not support the Appellant's assertion that she suffered neurological damage as a result of the motor vehicle accident. [Appellant's doctor] stated:

In summary then [the Appellant] is a [text deleted] year old female who was involved in a motor vehicle accident on the 3rd of July 1998 in which she sustained an apparent head injury with loss of consciousness, multiple contusions as well as a strain to her neck and lower back. There was no evidence of any neurological damage. The contusions resolved as expected. She had ongoing problems with neck and especially lower back pain with some pain into the right leg. These problems were treated with physiotherapy and analgesics as well as home exercises. She had developed some right upper quadrant pain which appeared musculoskeletal in nature. Gastrointestinal investigations revealed only a benign appearing hepatic cyst. She has also been struggling with ongoing depressive symptoms which date back many years and when last seen on the 15th of November appeared to be doing reasonably well at that time. (underlining added)

Appeal

The appeal hearing took place on July 26, 2004. The Appellant appeared together with her son, [text deleted], who spoke on behalf of the Appellant. [Appellant's son] submitted that, although there was no medical evidence to substantiate that his mother had suffered a permanent impairment to her right leg and right side due to neurological damage, he requested the Commission to provide an award to the Appellant for the pain that she was suffering to her right leg and right side.

In reply the Commission indicated that it did not have jurisdiction to deal with [Appellant's son's] request because the appeal did not deal with this issue of the Appellant's pain but with the

issue of a permanent impairment award for neurological damage to the Appellant's right leg and right side.

Notwithstanding these comments from the Commission the Appellant wished to proceed with this appeal and requested that she testify as to her medical condition. The Appellant described the motor vehicle accident that she was involved in, the injuries she sustained in the accident and the continuous pain that she suffered to the right side of her body and right leg.

MPIC's legal counsel submitted that:

1. the Appellant failed to provide any medical evidence to support the Appellant's submission that she had suffered neurological damage as a result of the motor vehicle accident to her right leg and right side which entitled her to receive an increase in the amount of her permanent impairment award from MPIC.
2. the Appellant has not established that any of the complaints that the Appellant referred to in respect of her right leg and right side of her body were the result of injuries caused by the motor vehicle accident.
3. therefore the Appellant has failed to establish, on a balance of probabilities, that she was entitled to an increase in the permanent impairment award that she had received from MPIC.

The Commission accepts the submission of MPIC's legal counsel and rejects the submission of the Appellant. The Commission determines that:

1. the medical opinions of [Appellant's doctor] and [Appellant's neurologist] clearly established that there was no evidence that the Appellant suffered neurological damage to her right leg and right side.

2. the Appellant has not established, on a balance of probabilities, that she is entitled to an increase in the permanent impairment award she received from MPIC.
3. MPIC correctly applied Section 127 of the MPIC Act and the provisions of Manitoba Regulation 41/94 in rejecting the Appellant's application for an increase in the amount of her permanent impairment award.
4. For these reasons, the Appellant's appeal is dismissed and the Internal Review Officer's decision dated February 13, 2002 is confirmed.

The Commission notes the comments of the Internal Review Officer in his decision dated February 13, 2002 as follows:

. . . . Your son mentioned that you are suffering from depression (and there is some reference to that also in the latest report from [Appellant's doctor]). You may be entitled to treatment benefits for this condition, if it is related to the motor vehicle accident. If you are interested in pursuing this, you should contact your case manager.

The Appellant may wish to consider pursuing this suggestion by the Internal Review Officer.

Dated at Winnipeg this 13th day of August, 2004.

MEL MYERS, Q.C.

HONOURABLE ARMAND DUREAULT

WILSON MACLENNAN