



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-01

PANEL: Ms Laura Diamond, Chairperson
Ms Yvonne Tavares
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf, via teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.

HEARING DATE: April 18, 2005

ISSUE(S): Entitlement to permanent impairment benefit for loss of sense of smell and frontal contusion

RELEVANT SECTIONS: Sections 127 and 129(2) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Division 2, Subdivision 3, Section 1 and Subdivision 1, Section 1.2(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, [text deleted], was injured in a motor vehicle accident on June 22, 2000. As a result of injuries sustained in this accident, she was in receipt of Personal Injury Protection Plan benefits which included a permanent impairment award of .5% for a cerebral concussion. This award was not the subject of an appeal.

However, as a result of head injuries sustained in the accident, the Appellant experienced a total loss of bilateral olfactory nerve function as well as a frontal contusion.

The Appellant’s loss of sense of smell and frontal contusion were the subject of a permanent impairment award, resulting in a total benefit of 5% of the maximum available. This decision was reviewed by an Internal Review Officer on October 2, 2003.

The Internal Review Officer upheld the case manager’s award of 2% for loss of sense of smell, 2% for the effect on the activities of daily living (e.g. eating) and 1% for the frontal contusion, for a total of 5% of the maximum available. It is from this decision of the Internal Review Officer that the Appellant now appeals.

Discussion

Section 127 of the MPIC Act reads as follows:

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.

Permanent impairment benefits are awarded in accordance with the Schedule of Permanent Impairments found in Manitoba Regulation 41/94 of the MPIC Act.

Section 1 of Subdivision 3, Division 2 (Central and Peripheral Nervous System) of that Regulation reads as follows:

Subdivision 3: Cranial Nerves

1. Olfactory nerves (Right and Left)

(a) total loss (R/O functional anosmia with ammonia test).....2%

(b) distortion of smell (if present add to above %)

- (i) unpleasant but not interfering with ADL (e.g. eating).....0%
- (ii) unpleasant and occasionally interfering with ADL (e.g. eating).....2%
- (iii) unpleasant and constantly interfering with ADL (e.g. eating).....4%

There is no specific impairment listed for a frontal contusion under the Regulation. However, Section 129(2) of the MPIC Act reads as follows:

Impairment not listed on 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.

Section 1.2(a) of Subdivision 1 of Division 2 of the Regulation deals with the Central and Peripheral Nervous System, and in particular the Skull, Brain and Carotid Vessels and alteration of brain tissue:

1.2 Post-traumatic alteration of tissue

- (a) with laceration or intracerebral hematoma.....2%

The Appellant’s frontal contusion was compared with this factor, and a permanent impairment of 1% was assessed.

The Appellant testified at the hearing. For the most part, she took issue with MPIC’s permanent impairment award of 2% for interference with the activities of daily living. She testified that she had lost her sense of smell and, as a result, she was concerned that she would not be able to smell and detect dangerous situations such as the smell of leaking gas in her car, or of a fire at home or in her workplace.

The Appellant was also concerned that when cooking, she would be unable to taste whether she had burned food. She testified that while she can taste some things, such as the difference between sweet and salty, she could not appreciate the full flavour of foods. For example, foods that she had enjoyed prior to the accident, [text deleted], did not taste as good to her any more, since the accident.

Counsel for MPIC submitted that the Appellant had been compensated to the maximum for her loss of sense of smell under Section 1(a) of Subdivision 3, and had been more than adequately compensated for the frontal contusion (particularly when the .5% award for cerebral concussion was taken into consideration).

In regard to the permanent impairment award for the interference with activities of daily living, counsel for MPIC submitted that it was clear from the Appellant's testimony that her sense of taste had not been completely eliminated. The ammonia test performed on the Appellant, which indicated that she had completely lost her sense of smell, did not address taste specifically, and by the Appellant's own testimony, she could still appreciate some tastes. As such, her condition would not qualify for the greater permanent impairment under Section 2(iii) of Subdivision 3, i.e. "unpleasant and constantly interfering with the activities of daily living (e.g. eating) ... 4%".

Accordingly, the Commission finds that the Appellant has failed to establish, on the balance of probabilities, that the 5% of maximum permanent impairment benefits awarded by the case manager and upheld by the Internal Review Officer was insufficient or incorrect.

For these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date October 2, 2003.

Dated at Winnipeg this 27th day of April, 2005.

LAURA DIAMOND

YVONNE TAVARES

PAUL JOHNSTON