

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-59**

PANEL: Ms Yvonne Tavares, Chairperson
The Honorable Mr. Wilfred De Graves
Dr. Patrick Doyle

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

HEARING DATE: January 3, 2008

ISSUE(S): 1. Adequacy of Permanent Impairment Benefits;
2. Entitlement to coverage for various dental expenses; and
3. Personal care assistance benefits.

RELEVANT SECTIONS: Sections 127, 129(1), 131 and 136 of The Manitoba Public
Insurance Corporation Act ('MPIC Act') and Section 2 and
Schedule A of Manitoba Regulation 41/94

**AICAC 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, [text deleted], was involved in a motor vehicle accident on April 16, 2001 when he was struck by a vehicle while crossing the street. Due to the bodily injuries which the Appellant sustained in this accident, he became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act.

The Appellant has appealed to this Commission from the following Internal Review decisions, respecting the following issues:

1. Internal Review decision dated April 15, 2002 - Re: Entitlement to dental treatment for lower arch; and entitlement to permanent impairment benefits for disfigurement of the left calf.
2. Internal Review decision dated September 26, 2002 - Re: Entitlement to further coverage, if required, in the future for any additional TM appliance therapy.
3. Internal Review decision dated July 29, 2003 - Re: Entitlement to coverage for dental expenses; and entitlement to further permanent impairment benefits for head injury.
4. Internal Review decision dated June 28, 2004 - Re: Entitlement to personal care assistance benefits.
5. Internal Review decision dated September 28, 2004 - Re: Entitlement to permanent impairment benefits for reduction in speech discrimination.
6. Internal Review decision dated January 28, 2005 - Re: Entitlement to permanent impairment benefits for skull fracture or fracture of the orbit.
7. Internal Review decision dated June 6, 2005 - Re: Entitlement to permanent impairment benefits for peripheral nerve injury.

**1. Entitlement to dental treatment for lower arch; and
Entitlement to permanent impairment benefits for disfigurement of the left calf**

The Internal Review decision of April 15, 2002 confirmed the case manager's decision of February 4, 2002 and dismissed the Appellant's Application for Review. The Internal Review Officer found that, on the basis of the information on the Appellant's file, a causal connection between any disfigurement of the Appellant's left calf and the motor vehicle accident of April 16, 2001 could not be established.

At the hearing of this matter, counsel for MPIC submitted that there was still no evidence of scarring or disfigurement of the Appellant's left calf and accordingly, a permanent impairment award was not applicable.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant, [text deleted], and by counsel on behalf of the MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that he sustained any scarring or disfigurement of his left calf as a result of the motor vehicle accident on April 16, 2001. As a result, the Appellant's appeal is dismissed and the Internal Review decision of April 15, 2002 with respect to this issue is confirmed.

The Internal Review decision of April 15, 2002 also denied coverage for dental treatment of the Appellant's lower dental arch. However, this decision was rescinded by the Internal Review decision dated September 26, 2002, wherein the Internal Review Officer agreed to cover the cost of a lower partial denture to address the Appellant's temporomandibular joint symptoms.

2. Entitlement to further coverage, if required, in the future for any additional TM appliance therapy

As noted above, the Internal Review decision of September 26, 2002 agreed to cover the cost of a lower partial denture to address the Appellant's temporomandibular joint symptoms. However, the Internal Review Officer qualified that decision on the basis that no further coverage would be provided for any additional TM appliance therapy.

At the hearing of this matter, the Appellant confirmed that he has not replaced the original appliance covered by MPIC. However, he wanted confirmation that any further replacements of the TM appliance would be covered by MPIC.

At this point in time, the determination of whether future TM appliances should be covered by MPIC is premature. In the future, should the Appellant's TM appliance need replacement, then that claim will need to be assessed by MPIC and a determination made as to whether or not coverage will be provided for a new TM appliance. The Appellant will, of course, have the opportunity to seek an internal review and appeal of that decision at that time, if required.

3. Entitlement to coverage for dental expenses; and Entitlement to further permanent impairment benefits for head injury

The Internal Review decision of July 29, 2003 determined that the dental expenses which the Appellant had submitted for payment were not motor vehicle accident-related. The Internal Review Officer found that the expenses claimed were basic dental treatment unrelated to the partial dental therapy which was a treatment eligible for coverage on account of the motor vehicle accident.

Upon a careful review of all of the documentary evidence made available to it, and upon hearing

the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that the dental expenses claimed related to the motor vehicle accident of April 16, 2001.

The Internal Review decision of July 29, 2003 also awarded the Appellant a permanent impairment benefit of 0.5% for a minor concussion. The Appellant is appealing that decision on the basis that he believes that he sustained a major concussion and/or amnesia following the motor vehicle accident of April 16, 2001. He advises that after the motor vehicle accident the police took him home as he didn't want to go to the hospital. It wasn't until April 19th that he attended at the hospital. He claims that he was unconscious for most of the time from April 16th through to April 19th, as he can't recall anything about that period of time. Therefore, he submits that he must have sustained a major concussion as a result of the motor vehicle accident and should be entitled to a permanent impairment award on that basis.

Upon a review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that the Appellant has not established, on a balance of probabilities, that he sustained a major concussion as a result of the motor vehicle accident of April 16, 2001. There is simply no evidence upon which to grant a greater impairment benefit than the 0.5% already awarded for the Appellant's head injury.

As a result, the Appellant's appeal of the Internal Review decision dated July 29, 2003 is dismissed and the Internal Review decision dated July 29, 2003, is therefore confirmed.

4. Entitlement to personal care assistance benefits

The Internal Review decision dated June 28, 2004 rescinded the case manager's decision of November 27, 2003 and allowed the Appellant reimbursement for personal care assistance expenses for a six (6) month period from the date of the motor vehicle accident.

The Appellant has appealed from that decision to this Commission, on the basis that he continues to require personal and home care assistance due to injuries arising from the motor vehicle accident. In particular, he maintains that his vertigo and dizziness prevent him from performing personal care and home care activities. He attributes the vertigo and dizziness to the motor vehicle accident and therefore submits that he is entitled to personal and home care assistance.

Counsel for MPIC submits that there was no evidence of the Appellant's physical limitations at the time of the internal review in 2004 and no evidence that he required personal care assistance benefits in 2004. Therefore, she submits that the Appellant has not established, on a balance of probabilities, that he required personal care assistance or that any such assistance resulted because of injuries sustained in the motor vehicle accident of April 16, 2001.

Upon a review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that based upon the current available medical information, the Appellant has not established, on a balance of probabilities, that personal care assistance was required beyond the six (6) months post-motor vehicle accident allowed by MPIC, due to injuries sustained in the motor vehicle accident of April 16, 2001. As a result, the Appellant's appeal of the Internal Review decision dated June 28, 2004 is dismissed and the Internal Review decision dated June 28, 2004, is therefore confirmed.

5. Entitlement to permanent impairment benefits for reduction in speech discrimination

The Internal Review decision of September 28, 2004 reaffirmed the prior Internal Review decision of July 29, 2003, that the Appellant had received the maximum award (thirty (30%) percent) for hearing loss and determined that the Appellant was not entitled to any further permanent impairment benefits due to any reduction in speech discrimination.

Upon a review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that the maximum award pursuant to the Schedule of Permanent Impairments - Division 12, Subdivision 3, Hearing, is thirty (30%) percent. As the Appellant has already received the maximum impairment benefit for hearing loss, he is not entitled to any further permanent impairment benefits due to any reduction in speech discrimination.

As a result, the Appellant's appeal of the Internal Review decision dated September 28, 2004 is dismissed and the Internal Review decision dated September 28, 2004 is therefore confirmed.

6. Entitlement to permanent impairment benefits for skull fracture

The Internal Review decision dated January 28, 2005 determined that the Appellant was not entitled to a permanent impairment benefit for the right orbital skull fracture.

The Appellant has appealed that decision to this Commission on the basis that he has a deformity on his skull in the form of a bump on his head. He therefore submits that he is entitled to a permanent impairment benefit for this impairment.

Upon a review of all of the documentary evidence made available to it, and upon hearing the submissions made by the Appellant and by counsel on behalf of MPIC, the Commission finds that there is no evidence of a change in form and symmetry to the Appellant's face as a result of the orbital fracture. Therefore, the Appellant is not entitled to a permanent impairment benefit for "skull fracture" or "fracture of the orbit".

As a result, the Appellant's appeal of the Internal Review decision dated January 28, 2005 is dismissed and the Internal Review decision dated January 28, 2005 is therefore confirmed.

7. Entitlement to permanent impairment benefits for peripheral nerve injury

At the hearing of this appeal, the Appellant advised that he was withdrawing his appeal of the Internal Review decision dated June 6, 2005.

Several additional matters were identified during the course of this appeal that shall be referred back to MPIC's case manager for an assessment and determination of whether or not the Appellant is entitled to further PIPP benefits arising from the motor vehicle accident of April 16, 2001. Although the Internal Review Officer's letter of July 20, 2005 addressed the following issues, it was agreed at the appeal hearing that his letter did not constitute an Internal Review decision from which the Appellant had the right of appeal. These matters include:

- Loss of field of vision/ visual phenomenon of flashing in eyes "on each heartbeat";
- Right shoulder mobility and range of motion (loss and joint dysfunction);
- Sensory, motor reflex and vibration sense deficit associated with both ankles;
- Left lung (slightly hyperinflated);
- Dizziness and vertigo; and
- Difficulties with concentration and memory.

Depending upon the outcome of whether or not these complaints are motor vehicle accident-related, additional permanent impairment awards or further PIPP benefits may be indicated. Additionally, if the Appellant's dizziness and vertigo relate to the motor vehicle accident, further consideration may need to be given to the Appellant's claim for personal care assistance benefits. The Appellant shall then have the opportunity to seek internal reviews and appeals of any decisions respecting entitlement to PIPP benefits concerning these issues, if required.

Dated at Winnipeg this 18th day of March, 2008.

YVONNE TAVARES

HONOURABLE WILFRED DE GRAVES

DR. PATRICK DOYLE