

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by THE ESTATE OF [text deleted]
AICAC File No.: AC- 05-10**

PANEL: Ms Yvonne Tavares, Chairperson
Dr. Patrick Doyle
Ms Sandra Oakley

APPEARANCES: The Appellant, the Estate of [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: December 11, 2008

ISSUE(S): Entitlement to additional permanent impairment benefits.

RELEVANT SECTIONS: Sections 127 and 129 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 was involved in a motor vehicle accident on July 3, 1998. 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 previously appeared before the Commission on June 25, 2003. In its Reasons for Decision dated July 18, 2003, the Commission directed that the Appellant's entitlement to additional permanent impairment benefits respecting the loss of function of the shoulder and the loss of function of the

thigh or leg be referred back to MPIC's case manager for additional investigation and assessment.

In a decision dated July 16, 2004, MPIC's case manager determined that there was no permanent impairment entitlement as it pertained to restriction of motion of the shoulder joint or loss of function of the thigh or leg as a result of muscle wasting. The Appellant sought an Internal Review of that decision. In a decision dated October 19, 2004, the Internal Review Officer confirmed the case manager's decision of July 16, 2004 and dismissed the Appellant's Application for Review.

The Appellant has now appealed from that decision to this Commission. The Appellant's representative submits that:

1. his late father's shoulder injury was obviously connected to the motor vehicle accident.
Given the severity of the accident itself, that alone should be sufficient evidence of an injury to the right shoulder to support a Permanent Impairment award for loss of function.
2. his late father lost considerable muscle mass all over his body after the motor vehicle accident. The loss of muscle mass everywhere on his body would account for the fact that there was minimal difference between the right and left thigh circumference.
3. his late father's overall physical condition and his level of independent function after the motor vehicle accident were markedly reduced, providing further evidence of the devastating impact of the motor vehicle accident on his late father.

The Appellant's representative argues that the accident was so severe that it resulted in several permanent injuries to his late father, including the shoulder injury and loss of muscle mass,

which were not previously compensated and which should qualify for a permanent impairment award.

Upon a careful review of all the documentary evidence made available to it, and upon hearing the submissions made by the Appellant's representative and by counsel on behalf of MPIC, the Commission finds that there is insufficient evidence in order to enable a determination of permanent impairment awards for loss of function of the right shoulder and loss of function of the leg due to thigh muscle atrophy.

With respect to the permanent impairment entitlement for loss of function of the leg due to thigh muscle atrophy, the evidence before the Commission establishes that the difference between the right and left thigh at the time of measurement was 0.5cm and therefore was insufficient to qualify for a permanent impairment award pursuant to the Schedule of Permanent Impairments. Unfortunately, there are no pre-accident measurements to enable any comparison with the post-accident measurements to permit a determination of muscle atrophy. Accordingly, the Commission finds that the Appellant has not established, on a balance of probabilities, an entitlement to a permanent impairment benefit for loss of function of the leg due to thigh muscle atrophy.

With respect to loss of function of the right shoulder, the Commission finds that there is insufficient evidence in order to establish a permanent impairment award for loss of function of the right shoulder. In a report dated September 1, 1999, [Appellant's Doctor] comments on the presence of a central cord syndrome with sensory loss in both arms. However, [the Appellant's Doctor] indicates in that report that the Appellant at that time was quite convinced that his arms had recovered. In order to consider an impairment award, further consultation with the

neurologist would have been required in order to determine whether the Appellant had indeed recovered from the central cord syndrome. Unfortunately, there was never any further follow-up by the Appellant with the neurologist in regards to the loss of shoulder function. As a result, the Commission finds that the Appellant has not established, on a balance of probabilities, an entitlement to a permanent impairment award for loss of shoulder function resulting from the motor vehicle accident of July 3, 1998.

As a result, the Appellant's appeal of the Internal Review decision of October 19, 2004 is dismissed and the Internal Review decision dated October 19, 2004 is therefore confirmed.

Dated at Winnipeg this 15th day of January, 2009.

Ms. Yvonne Tavares

Dr. Patrick Doyle

Ms. Sandra Oakley