

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File Nos.: AC-10-060 AND AC-11-114**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Mary Lynn Brooks
Ms Jean Moor

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

HEARING DATE(S): October 24 and 25, 2012

ISSUE(S):

1. Entitlement to reimbursement for various expenses.
2. Entitlement to further Permanent Impairment Benefits.
3. Entitlement to further Income Replacement Indemnity ("IRI") benefits.

RELEVANT SECTIONS: Sections 81(1), 127 and 136 of The Manitoba Public
Insurance Corporation Act ('MPIC Act') and Section 19 of
Manitoba Regulation 40/94 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

On March 1, 2007, the Appellant, [text deleted], was a passenger on a Greyhound bus travelling from [city #1] to [city #2]. Visibility on the highway was poor. The bus rear-ended a flatbed truck and went into the ditch. As a result of this accident, the Appellant hit her head on the seat in front of her. The Appellant sustained the following injuries as a result of the accident:

- Multiple contusions and lacerations to her face, including a bleeding nose;

- Laceration to the left leg and contusions to both legs;
- Dental injury;
- Discolouration under both eyes; and
- Facial droop.

At the time of the accident, [the Appellant] was employed as [text deleted] on a full-time basis.

[The Appellant] also worked as a self-employed [text deleted].

The Appellant has appealed the following Internal Review Decisions with respect to the following issues:

1. Internal Review Decision dated February 2, 2010:

- Reimbursement for naturopathic products (including vitamins) – the Appellant withdrew this issue at the appeal hearing;
- Reimbursement for a Conair facial massager and a magnifying mirror – Appellant withdrew this issue at the appeal hearing;
- Reimbursement in excess of \$400 for clothing expenses – this issue was withdrawn at the Case Conference Hearing of September 29, 2011;
- Entitlement to IRI for attending medical appointments and treatments – this issue was withdrawn at the Case Conference Hearing of September 29, 2011.
- Reimbursement for travel/parking expenses;
- Whether the Appellant's permanent impairment benefits were properly assessed and calculated for the following:
 - Facial nerve weakness (2%)
 - Facial scarring/discolouration/alteration in form and symmetry (4.28%)
 - Left lower limb scarring and discolouration (1.28%)

- Right lower limb discolouration (1%)

2. Internal Review Decision dated September 12, 2011:

- Whether a graduated return to work program was medically required;
- Entitlement to further IRI benefits for the following:
 - Cancellation of [text deleted] appointments;
 - Loss of profession – unable to build [text deleted] practice;
 - Loss of [text deleted] teaching opportunity – fall of 2007;
 - Income for 2007 was \$10,000 less than 2006 income;
 - Loss of opportunity for promotion [text deleted].

3. Internal Review decision dated January 20, 2012:

- Whether the Appellant is entitled to additional permanent impairment benefits.

The Commission has addressed each of the Internal Review Decisions separately as follows:

1. Internal Review Decision dated February 2, 2010

- a) Entitlement to Travel/Parking Expenses:

On March 6, 2007 (5 days after the accident) [the Appellant] had her husband pick her up from [city #1] and take her to her residence in [city #2]. A total of 450.8 kilometres was submitted for travel expenses. At the appeal hearing, [the Appellant] testified that she did not want to take a bus back to [city #2] from [city #1] and she didn't feel well enough to drive herself back home to [city #2]. Her husband came out to [city #1] on the weekend and they drove back to [city #2] on Monday.

Upon a careful examination of the totality of the evidence before it, the Commission finds that the travel expenses claimed by the Appellant do not qualify for reimbursement pursuant to the MPIC Act and Regulations.

Section 136(1) of the MPIC Act provides that a victim is entitled to reimbursement of expenses related to a motor vehicle accident, subject to the applicable Regulation. Section 19 of Manitoba Regulation 40/94 provides that travel expenses (incurred by a victim for the purpose of receiving care) related to injuries sustained in the motor vehicle accident shall be reimbursed by MPIC. The Commission finds that the Appellant was not in [city #1] for the purpose of “receiving care” and therefore the travel expenses incurred do not fall within Section 19 of Manitoba Regulation 40/94 as the expenses were not incurred for the purpose of receiving care.

On April 10, 2007, the Appellant submitted parking expenses totalling \$7.00 as a result of attending a meeting with her case manager at 234 Donald Street, [city #2]. There is no coverage under the MPIC Act and Regulations for reimbursement of parking expenses incurred as a result of attending meetings at MPIC. Accordingly this expense does not qualify for reimbursement.

b) Whether the Appellant’s Permanent Impairment Benefits were Properly Assessed and

Calculated for the following:

- Facial Nerve Weakness (2%)
- Facial Scarring/Discolouration/Alteration in form and symmetry (4.28%)
- Left Lower limb scarring/discolouration (1.28%)
- Right lower limb discolouration (1%)

On December 5, 2008, MPIC's case manager issued a decision regarding the Appellant's entitlement to permanent impairment benefits as a result of the injuries which she sustained in the accident of March 1, 2007. The case manager provided a permanent impairment benefit for the following injuries:

INJURY/IMPAIRMENT	%	APPLICABLE SECTION
Facial Nerve Weakness	2.0	Division 2: Subdivision 3 Item 6(a)(ii)B
Facial Scarring/Discolouration/ Alteration in Form & Symmetry	4.28	Division 13: Subdivision 1 Table 13.1
Left Lower Limb Scarring/ Discolouration	1.28	Division 13: Subdivision 2 Table 13.3
Right Lower Limb Discolouration	1.0	Division 13: Subdivision 2, Table 13.3
TOTAL	8.56	

The Appellant disagreed with that decision and sought an Internal Review. In the Internal Review decision of February 2, 2010, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that, with respect to the items set out in the case manager's decision of December 5, 2008, those permanent impairment benefits were correctly assessed and calculated.

The Appellant has appealed that decision to this Commission. With respect to the items outlined in the decision, the Appellant does not agree with the following:

- Facial nerve weakness – the Appellant feels that Class 3 or 4 should be applied.
- Alteration in form and symmetry – the Appellant was provided with a permanent impairment entitlement of 3% for Class 3 – conspicuous change that affects one anatomical element. The Appellant feels that the anatomical elements affected by the motor vehicle accident include: forehead (depression in forehead – contour

deformity); right orbit; right nose; right upper and lower lip; right cheek – levator muscle (cheek flat); and right nostril bigger – nasolabial fold flat.

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is entitled to an additional 2% for facial weakness to the facial nerve since the weakness results in difficulty speaking. The Commission found that based upon the Appellant's testimony at the appeal hearing, the Appellant does not speak as she did before the motor vehicle accident with respect to modelling sounds. As a result, the Commission finds that the Appellant is entitled to the additional 2% pursuant to Division 2: Subdivision 3 Item 6(a)(ii) - add 2% if weakness results in difficulty speaking. As a result the Appellant is entitled to a total award of 4% for facial nerve weakness.

With respect to facial scarring/dicolouration/alteration in form and symmetry, the Commission finds that pursuant to Division 13: Subdivision 1 Table 13.1, the Appellant was provided with a permanent impairment entitlement of 3% for Class 3 – conspicuous change that affects one anatomical element. The Commission however finds that the facial disfigurement is a conspicuous change that affects more than 2 anatomical elements pursuant to Division 13: Subdivision 1 Table 13.1 Class 3(c). Therefore the Appellant is entitled to a total permanent impairment benefit of 7% for facial disfigurement rather than 3% as awarded by MPIC. The Commission finds that based upon the Appellant's testimony at the appeal hearing it is satisfied that the Appellant's eyelid, her right cheek and her lips have sustained an alteration in form and symmetry due to the injuries from the motor vehicle accident. Accordingly, the Appellant is entitled to an additional 2.72%

impairment rating for a total permanent impairment benefit of 7% for facial disfigurement and scarring.

As a result, the Appellant's appeal is allowed with respect to an additional 2% impairment rating for facial nerve weakness and an additional 2.72% impairment rating for facial disfigurement and the Internal Review decision dated February 2, 2010 is hereby varied accordingly.

2. Internal Review Decision dated September 12, 2011

The Appellant received IRI benefits for the period from March 7, 2007 to April 10, 2007. The Appellant's IRI benefits were calculated based upon the 2007 maximum Gross Yearly Employment Income of \$71,000. The Appellant is seeking additional IRI benefits with respect to the following:

1. A graduated return to work program; and
2. Additional IRI benefits for the following:
 - cancellation of [text deleted] appointments;
 - loss of profession – unable to build her [text deleted] practice as she had intended;
 - loss of [text deleted] teaching opportunity – fall of 2007;
 - income for 2007 was \$10,000 less than 2006 income;
 - loss of opportunity for promotion [text deleted].

- a) A graduated return to work program:

In her submission to the Commission, the Appellant argues that having access to a gradual return to work program in order to receive essential rehabilitation and medical services for her disability was required. She claims that a gradual return to work program was not unreasonable for someone with her documented disability. The Appellant argues that

although she did not specifically request a gradual return to work program from MPIC, she should have been offered the opportunity to take part in such a program. The Appellant testified that she basically implemented her own gradual return to work program as she gradually increased her activity daily through March and April of 2007 and throughout the summer of 2007.

Counsel for MPIC argues that a gradual return to work program was not medically required for the Appellant due to injuries sustained in the accident of March 1, 2007.

Upon a careful examination of the totality of the evidence before it, the Commission finds that a gradual return to work program was not medically required for the Appellant in April 2007. The Appellant testified at the hearing that after the accident she gradually tried to do more and more things as she felt able. After March 2007, she was doing self-directed activities for her employment and was able to schedule her work activities in order to accommodate her functional abilities. Further, the Appellant testified that she wanted to return to work activities in April of 2007 as she did not want to develop a chronic condition.

The Commission finds that the Appellant did not sustain a loss of income due to an inability to return to her full duties at her employment. The Appellant was in the fortunate position of being able to partake in her employment activities to the extent that she felt able, without incurring any loss of income. Further, the Commission finds that there was no objective information filed to support that the Appellant was not able to perform the essential activities of her employment. Accordingly, the Commission finds that there was

no entitlement to a gradual return to work program for the Appellant in March or April 2007, or thereafter.

b) Additional IRI benefits:

The MPIC Act provides that IRI benefits for a full-time earner are calculated based upon the full-time earner's income as at the date of the accident. With respect to a full-time earner, the MPIC Act does not take into consideration loss of income related to loss of future earning opportunities. With respect to the Appellant's self-employment, there was simply no documentary evidence provided by the Appellant to establish a loss of income pertaining to her self-employment. The Appellant filed no business records to indicate that her revenues decreased following the accident. As a result, the Commission finds that the Appellant is not entitled to additional IRI benefits regarding any of the additional claims made by the Appellant.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated September 12, 2011 is hereby confirmed.

3. Internal Review Decision dated January 20, 2012:

By letter dated September 30, 2011, the Appellant requested additional permanent impairment benefits. The information outlined in her letter was reviewed by MPIC's Health Care Services team. In a decision dated January 20, 2012, MPIC's case manager advised the Appellant that the information which she submitted did not provide any new information which would render her entitled to additional permanent impairments beyond those already provided in the previous decision of December 5, 2008.

The Appellant filed an Application for Review of that decision. Counsel for MPIC agreed that for the purposes of this appeal, the case manager's decision of January 20, 2012 would be treated as an Internal Review decision with regards to the Appellant's entitlement to additional permanent impairment benefits for the following:

1. Upper Limb (shoulder and arm)
2. Lower Limb (knee and leg)
3. Skull, Brain and Carotid Vessel (alteration of brain tissue)
4. Skull, Brain and Carotid Vessel (alteration of skull)
5. Skull, Brain and Carotid Vessel (functional alteration of the brain)
6. Cranial nerve (facial nerve)
7. Temporomandibular joints
8. Alteration or Loss of Teeth
9. Frontal – Orbital – Nasal Area (paranasal sinuses and speech impairment)
10. Vision (photophobia)
11. Psychiatric Condition, Syndrome or Phenomenon

With respect to her entitlement to additional permanent impairments, the Appellant submits the following:

1. Shoulder – the Appellant submits that she suffered a frozen shoulder due to the motor vehicle accident which should entitle her to a permanent impairment benefit.
2. Knee – the Appellant maintains that she injured her legs in the motor vehicle accident.

The Appellant is of the opinion that she is entitled to a 1% permanent impairment benefit for post-traumatic patella-femoral pain syndrome with objective signs. She makes reference to the following documents as containing medical evidence that support her position:

- X-ray report of left lower leg, [Appellant's doctor #1], March 21, 2007;
- Left leg shin trauma, [Appellant's doctor #2], May 3, 2007;
- Left leg shin trauma, [Appellant's doctor #3], February 7, 2009;

- Contusion both knees, [Appellant's doctor #4], October 28, 2008.
3. Concussion – [the Appellant] submits that she is entitled to a permanent impairment benefit for a moderate cerebral concussion or contusion as well as post-traumatic alteration of tissue with laceration. The Appellant cited the following documents as providing evidence supporting her position:
- [Text deleted], [Appellant's doctor #5], documentation of head injury, December 11, 2008;
 - [Text deleted] document, March 1, 2007;
 - Loss of consciousness, blow to the head, Grade 2 concussion as per [Appellant's neurologist], May 30, 2007 as well as August 27, 2009;
 - Blow to head, head injury, [Appellant's doctor #3], February 7, 2009.
4. Impairment for alteration of skull - the Appellant submits that she is entitled to a permanent impairment for a fracture involving the base of the skull. In support of her position, she makes reference to a document submitted by [Appellant's doctor #3] dated February 7, 2009.
5. Functional alteration of the brain – the Appellant submits that she is entitled to a permanent impairment benefit as it relates to the following:
- Communication disorder that does not affect the person's ability to understand linguistic symbols but severely impairs his/her ability to use sufficient or appropriate language;
 - An alteration of consciousness that impairs the person's ability to perform the activities of daily living but not to such an extent that he/she requires supervision;
 - An alteration of higher cognitive or integrative mental function that impairs the person's ability to perform activities of daily living but not in such an extent that he/she requires supervision.

The Appellant refers to the following documents as evidence supporting her position:

- Report of [Appellant's doctor #2] dated May 8, 2008;
- A report signed by [Appellant's neurologist] dated May 30, 2007;
- [Appellant's neurologist]'s letter of March 4, 2009;
- [Text deleted] March 1, 2007 documents;
- [Appellant's doctor #2]'s May 3, 2007 report;
- [Appellant's doctor #3]'s February 7, 2009 report.

6. Facial nerve – the Appellant submits that she is entitled to a permanent impairment benefit for the following:

- Stapedes reflex with sonophobia;
- Class 4 facial weakness;
- Facial synkinesia;
- Hemifacial spasm;
- Lacrimation;
- Taste.

In support of her position, the Appellant relies on the following documents:

- Photos of March 26, 2008;
- Facial nerve impairment/paralyzed ([Appellant's doctor #2] May 3, 2007 report);
- [Appellant's neurologist]'s May 30, 2007 report and letters of March 4, 2009 and October 31, 2008;
- [Appellant's doctor #6]'s July 9, 2008 report;
- [Appellant's doctor #7]'s March 5, 2009 report;
- June 19, 2007 and October 27, 2008 reports of [text deleted].

7. Temporomandibular joints – the Appellant submits that she has developed a cranial facial muscle disorder that would entitle her to a permanent impairment benefit. She argues that this is the result of muscle imbalance on the right side of her face due to the facial nerve injury. The Appellant relies upon the following documents as supporting her position:
 - Photos of March 26, 2008;
 - Facial nerve impaired/paralyzed in a May 3, 2007 report;
 - [Appellant’s neurologist]’s May 30, 2007 report;
 - [Appellant’s doctor #6]’s July 9, 2008 report;
 - [Appellant’s doctor #7]’s March 5, 2009 report;
 - [Text deleted]’s June 19, 2007 and October 27, 2008 reports.
8. Alteration or loss of teeth – the Appellant submits that she is entitled to a permanent impairment benefit as it relates to the loss of her previously healthy second pre-molar. At the appeal hearing, it was agreed that the Appellant would follow up with her case manager for a determination regarding an entitlement to a permanent impairment for alteration or loss of teeth.
9. Paranasal sinuses and speech impairment – the Appellant submits that she is entitled to a permanent impairment benefit for the alteration of the frontal sinus as well as Class 3 speech impairment. The Appellant relies upon the following documents in support of her position:
 - Facial X-ray performed by [Appellant’s doctor #8] dated march 1, 2007;
 - [Appellant’s neurologist]’s August 27, 2009 report;
 - [Appellant’s neurologist]’s March 4, 2009 letter;
 - [Appellant’s doctor #4]’s October 20, 2008 report;
 - [Appellant’s doctor #2]’ May 28, 2008 report.

10. Vision – The Appellant submits that she is entitled to a permanent impairment benefit for photophobia. The Appellant relies upon [Appellant’s neurologist]’s October 31, 2008 report as well as her statement of April 10, 2007 in support of her position.
11. Psychiatric condition, syndrome or phenomenon – The Appellant submits that she is entitled to a permanent impairment benefit for a psychiatric condition, specifically post-traumatic syndrome/depression with psychiatric intervention on an occasional basis. The Appellant relies upon the following documents in support of her position:
 - [Appellant’s doctor #2]’ May 28, 2008 report;
 - [Appellant’s neurologist]’s May 30, 2007 report.

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after reviewing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has not established, on the balance of probabilities an entitlement to any additional permanent impairment benefits beyond those which have been awarded earlier in this decision.

Specifically, the Commission finds that upon a detailed examination of the documentary evidence before it, the Appellant has not met the onus of proof required to establish an entitlement to a permanent impairment benefit for any of the impairments which she is seeking beyond the benefits that have been awarded to her. The Commission agrees with the submission of counsel for MPIC that the Appellant has taken symptoms which she developed shortly after the motor vehicle accident and has extrapolated those symptoms into permanent impairments. The Commission finds that the Appellant has not provided sufficient supporting documentation

in order to establish that she has been left with permanent physical or mental impairments because of the motor vehicle accident of March 1, 2007.

Accordingly, the Commission finds that the Appellant is not entitled to any additional permanent impairment benefits beyond those which have been previously awarded to her in this decision. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated January 20, 2012 is confirmed.

Dated at Winnipeg this 20th day of December, 2012.

YVONNE TAVARES

MARY LYNN BROOKS

JEAN MOOR