

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-01-130**

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Laura Diamond
Mr. Wilson MacLennan

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

HEARING DATE: September 4, 2002

ISSUE(S): The assessment of permanent impairment benefits.

RELEVANT SECTIONS: Section 127 of the Manitoba Public Insurance Corporation Act (the 'MPIC Act') and Section 2 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

The Appellant, [text deleted], was involved in a motor vehicle accident on November 26, 1997. As a result of the accident, the Appellant sustained injuries and suffered certain permanent physical impairments arising out of those injuries. Pursuant to Section 127 of the MPIC Act, the Appellant is entitled to a lump sum indemnity for permanent impairments in accordance with Manitoba Regulation 41/94. The Appellant is appealing the Internal Review Decision dated October 5, 2001, with respect to her entitlement to additional permanent impairment benefits.

Section 127 of the MPIC Act provides that:

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.

Schedule A to Manitoba Regulation 41/94 sets out the compensation available for each type of permanent impairment as a percentage of the total amount available. The Appellant is seeking additional permanent impairment benefits specifically with regards to three additional impairments which she states were a result of the accident. The three additional benefits being sought by the Appellant relate to:

1. Shortening of the right foot;
2. Edema of the right and left knees; and
3. Complex regional pain syndrome/reflex sympathetic dystrophy syndrome.

1. Shortening of the Right Foot

The Appellant is seeking an impairment benefit for shortening of her right foot. She submits that there has been a change in symmetry between her feet as the right foot is now shorter than the left.

The Appellant was paid the maximum permanent impairment benefit of 8% for disfigurement of the right lower limb. The disfigurement award related to the severe change in form and symmetry affecting the right lower limb. We conclude that this benefit takes into account any

changes in symmetry between the feet and accordingly the Appellant has received the maximum benefit payable.

We note, however, that Section 2 of Manitoba Regulation 41/94 provides that:

Evaluation of impairment to symmetrical parts of the body

2 Subject to sections 3 and 4 and Schedule A, where a permanent anatomicophysiological deficit resulting from an accident impairs symmetrical parts of the body, or impairs a part of the body that is symmetrical to a part of the body that was permanently impaired before the accident, the evaluation of the permanent impairment for the purpose of Part 2 of the Act is determined by multiplying the total percentage of anatomicophysiological deficits impairing the more severely impaired symmetrical part of the body by an enhancement factor of .25 and adding the percentage thus obtained to the percentage attributed to the deficit resulting from the accident.

At the hearing of this matter, no submissions were made with respect to the applicability of the enhancement factor to the evaluation of the Appellant's permanent impairment benefit. As a result, this matter shall be referred back to MPIC's case manager for a determination of whether the Appellant is entitled to the application of the enhancement factor to her permanent impairment benefit.

2. Edema of the right and left knees

The Appellant is seeking a permanent impairment benefit with regards to the edema of her right and left knees. She maintains that the swelling is a symptom of her complex regional pain syndrome. The Appellant submits that if she stands for long periods of time, her knees begin to swell and a sharp poking pain is felt directly under the kneecaps, which leads to her entire leg swelling up. The Appellant also submits that since edema is not specifically compensated for under the Schedule of Permanent Impairments, it should be compensated for as part of her complex regional pain syndrome.

Counsel for MPIC submits that the edema is not a permanent problem and therefore would not attract an award for a permanent physical impairment. He submits that the swelling is not always the same and therefore cannot be categorized as a permanent physical impairment.

We recognize that the edema of the knees with which the Appellant suffers is a continuing problem resulting from the injuries which she sustained to her legs in the motor vehicle accident. [text deleted], physiotherapist, in her letter dated January 20, 2000, recorded varying measurements for the Appellant's left and right knee joints, depending upon whether she was in a standing or supine position. We note that although this matter was specifically referred by the Internal Review Officer to [text deleted], Medical Consultant to MPIC's Health Care Services team, in his Inter-departmental Memorandum dated September 24, 2001, [MPIC's doctor] neglected to address the issue of the Appellant's edema. At the hearing of this matter, the Appellant provided no medical information to the Commission to explain the cause of the edema.

We find that there is insufficient information currently before the Commission to determine the cause of the Appellant's edema. It may be that the damage that the Appellant sustained to her legs in the accident, created a lymphatic insufficiency and/or possibly the venous system was compromised. In any event, there is no evidence before us which would allow us to determine the extent of the insufficiency and correspondingly the appropriate award to be applied. As a result, this matter shall be referred back to MPIC's case manager for a determination of whether

the Appellant is entitled to an additional permanent impairment benefit pursuant to Part 1; Division 7, Item 4 - Venous and lymphatic lesions.

3. Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy Syndrome

The Appellant is seeking a permanent impairment benefit for the Complex Regional Pain Syndrome with which she suffers as a result of the motor vehicle accident. The Appellant states that the pain is the most important component of her injury and she feels that she should be compensated since it is a permanent aspect of the disorder.

Counsel for MPIC submits that there is no coverage for Complex Regional Pain Syndrome provided in the Schedule of Permanent Impairments. Accordingly, he submits there is no basis upon which to award such a benefit.

[Text deleted], medical consultant to MPIC's Health Care Services team in his Inter-Departmental Memorandum dated June 5, 2001, provided clarification regarding the application of permanent impairment awards. He notes the following:

Clarification related to the application of permanent impairment awards in general should also be provided. Permanent impairment awards are not applied for symptoms, but are based on limitations that are readily measurable by validated objective means. Neither pain nor the perception of altered sensation is associated with an impairment award. The application of permanent impairment awards for a condition like reflex sympathetic dystrophy are applied in a manner similar to many other conditions. Permanent impairment benefits are not applied directly for this condition, but they are based on the secondary effects. Impairment benefits for other injuries are treated in a similar fashion. For example, there is no specific benefit provided for a fracture, but the benefits are based on the associated measurable restriction in motion and abnormalities in angulation. Injuries to the central and peripheral nervous systems are applied in a similar fashion. The benefits for those conditions are based on the objective measured changes in strength, sensation and other functions including bladder,

bowel and limb functions. It is not because these conditions are not understood that benefits are based on their secondary effects, but because impairment benefits are in general based on the objective measurable effects and not necessarily the specific cause. In my opinion, the section of the Act dealing with impairments not listed in the Schedule is not applicable, since benefits for the measurable impairments associated with reflex sympathetic dystrophy are listed.

We are in agreement with [MPIC's doctor's] opinion with regards to the application of permanent impairment benefits to the injuries sustained by the Appellant resulting from the motor vehicle accident. Although we recognize the considerable impairment which the pain creates for the Appellant, there is no provision in the MPIC Act to cover the concept of damages or compensation for "pain and suffering", nor is there an implied or inherent jurisdiction on the part of the Commission to exercise relief other than that which falls within the four corners of the Legislation.

Accordingly, the Commission dismisses the Appellant's appeal with respect to a permanent impairment benefit for the Complex Regional Pain Syndrome and confirms the decision of the Internal Review Officer dated October 5, 2001.

Dated at Winnipeg this 17th day of September, 2002.

YVONNE TAVARES

LAURA DIAMOND

WILSON MacLENNAN