

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]**

**AICAC File No.: AC-01-67**

**PANEL:** Ms. Yvonne Tavares, Chairperson  
Ms. Deborah Stewart  
The Honourable Armand Dureault

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

**HEARING DATE:** September 6, 2002

**ISSUE:** Assessment of Permanent Impairment benefits.

**RELEVANT SECTIONS:** Section 127 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act') 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 August 12, 1999. 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 impairment in accordance with Manitoba Regulation 41/94. The Appellant is appealing the decisions of the Internal Review Officer, bearing dates May 9, 2001, and January 17, 2002, 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. With respect to the Internal Review Officer's decision dated May 9, 2001, the Appellant is appealing the assessment and calculation of the permanent impairment benefits awarded therein. With respect to the Internal Review Officer's decision dated January 17, 2002, the Appellant is seeking an additional permanent impairment benefit for the fracture of her pelvis as a result of the motor vehicle accident of August 12, 1999.

**1. Internal Review Decision dated May 9, 2001**

The Internal Review decision dated May 9, 2001, confirmed the adjuster's decision dated March 15, 2001. The Internal Review Officer found that the permanent impairment assessment took into account all of the relevant medical information and that the Appellant was awarded the full amount payable to her, based on the available medical information. In that regard, the Appellant received benefits for the following permanent impairments:

1.	Loss of consciousness	1%
2.	Left side rib fractures	0.5%
3.	Loss of complete lobe of lung	3%
4.	Alteration of tissue following a thoracotomy	2%
5.	Pleural impairment	9%
6.	Lung capacity	3%
7.	Scarring to the scalp	.675%
8.	Scarring to the trunk	7.7%

The two benefits which were greater than 5% (trunk scarring and pleural impairment) were combined using the Table of Successive Remainders, resulting in a permanent impairment benefit of 16%. The 16% was then combined with the remaining awards, resulting in a combined award of 26.175%. The award of 26.175% was then multiplied by \$110,076.00, being the maximum amount available to compensate impairment for 1999. This resulted in a benefit of \$28,812.40 payable to the Appellant.

The Commission agrees with the assessment and calculation of the permanent impairment benefit paid to the Appellant with respect to the loss of the pulmonary lobe, the alteration of lung tissue following a thoracotomy, the pleural impairment without restrictive functional alteration, the decrease in respiratory function, the loss of consciousness award and the scarring awards.

With respect to the permanent impairment benefit assessed for the left side rib fractures, we find that the Appellant is entitled to an additional benefit of 1%. The evidence before us reveals that she sustained fractures of the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> ribs resulting from her motor vehicle accident. Additionally, based on the X-ray report of [Appellant's doctor #1] dated October 4, 1999 and his comments regarding the deformity of the ribs on the left due to rib fractures, we conclude that those rib fractures resulted in either pseudoarthrosis or misalignment of the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> ribs. Accordingly, the Commission finds that the Appellant is entitled to be compensated on the basis of 0.5% in respect of each of the ribs which sustained fractures. Since she has already received 0.5%, which would be equivalent to a fracture sustained to a single rib, she is entitled to an additional 1% for the other two ribs which were fractured as a result of the motor vehicle accident. When multiplied by the maximum impairment benefit for 1999 of \$110,076.00, this results in an additional award of \$1,100.76 payable to the Appellant.

At the hearing of this matter, the Appellant submitted that she had suffered a cardiac arrest during her convalescence at the hospital after the motor vehicle accident. She, therefore, argued that she was entitled to a permanent impairment benefit in accordance with Part 1, Division 7, of the Schedule of Permanent Impairment benefits for a cardiovascular impairment.

The Commission finds, based on the report of [Appellant's doctor #2], dated September 17, 2002, that the Appellant did not have any type of cardiac or cardiovascular impairment arising from the motor vehicle accident. Accordingly, there would be no entitlement to a permanent impairment benefit in that regard.

## **2. Internal Review Decision dated January 17, 2002**

The Internal Review decision dated January 17, 2002, confirmed the adjuster's decision dated October 19, 2001. The Internal Review Officer found that the Appellant was not entitled to a permanent impairment benefit on account of the fracture to her pelvis.

Part 1, Division 1, Subdivision 2, Item 10(a) of the Schedule of Permanent Impairments provides that:

### **10. Pelvis**

(a) Deformity, pubic disjunction or sacro-iliac injury, including dystocia, if applicable:

- |             |         |
|-------------|---------|
| (i) severe: | 2 to 4% |
| (ii) minor: | 1%      |

Some indication of deformity is required before the Appellant becomes entitled to a permanent impairment benefit for a fractured pelvis. Based on [Appellant's doctor #3's] report dated

September 30, 2002, wherein he advised that the Schedule of Permanent Impairments would not apply to the Appellant's injuries, we find that the Appellant is not entitled to a permanent impairment benefit for fracture of the pelvis. Accordingly, the Commission dismisses the Appellant's appeal from the decision of the Internal Review Officer, dated January 17, 2002.

Dated at Winnipeg this 22 day of October, 2002.

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**YVONNE TAVARES**

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**DEBORAH STEWART**

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**HONOURABLE ARMAND DUREAULT**