



Subsequent to the motor vehicle accident the Appellant received a permanent impairment award for the scarring to his face and tongue. However, the Appellant has complained that since the accident he is unable to taste food which is hot and spicy. [Text deleted], a neurologist, examined the Appellant and provided a report to MPIC dated March 28, 2000. In this report [Appellant's neurologist] stated that the Appellant complained of loss of taste over the entire tongue, that he could not perceive hot or cold or salt sensations. [Appellant's neurologist] further reported that he conducted a neurological examination and determined that there was no objective loss in the special sensations of taste or smell documented. He further stated:

Whereas, the discreet taste perceptions of salt, bitter, sweet, sour, are usually regarded as lingual (tongue) attributes, in fact, the perception of these primary sensations is more diffuse, occurring not only on the anterior part of the tongue but also diffusely in the palate and to some extent on the posterior part of the tongue.

In addition, the sense of taste is not separated from the sense of smell. It is a complex interplay of perceptions on the tongue with perceptions in the palate and olfaction sensations.

On the basis of my discreet examination, and on the basis of the known anatomical and physiological aspects of taste and smell, it is my opinion that [the Appellant] does not suffer any defect in taste sensation.

MPIC requested [text deleted], one of their medical consultants, to provide a medical opinion on the Appellant's entitlement to a permanent impairment benefit. [MPIC's doctor] reviewed [Appellant's neurologist's] report and stated:

Based on the medical information on file, a physiological explanation cannot be provided for [the Appellant's] reported loss of taste. Therefore, permanent impairment benefits would not apply.

### **Case Manager's Decision**

On August 22, 2000 a case manager at MPIC wrote to the Appellant and stated:

On August 17, 2000, the above injury claim was reviewed by the Health Care Services Team for the purpose of assessing whether a permanent impairment for a potential loss of taste would apply as a result of the injuries suffered in the motor vehicle accident.

On March 2, 2000, you attended [Appellant's neurologist's] office for a medical assessment and complete testing to determine whether you have suffered any defect in taste sensation as a result of the laceration to your tongue.

[Appellant's neurologist's] report of March 28, 2000 has confirmed that through testing, you were able to perceive odors readily, having no defect in the sense of smell. There was no defect in tongue mobility in any direction and upon testing taste perception along the lateral edges of the tongue, this was found to be intact. On re-inserting the tongue back into the mouth, taste perception was intact and the significant scarring was not visible on the tongue.

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Based on the medical examination and testing performed by [Appellant's neurologist], a physiological explanation could not be provided for your reported loss of taste. Therefore, there will be no impairment for your subjective loss of taste under the Personal Injury Protection Plan.

#### **Application for Review**

On September 13, 2000 the Appellant applied for an Application for Review of the case manager's decision. The Internal Review Officer, in a letter dated October 17, 2000, advised the Appellant's solicitor that he was confirming the case manager's decision and rejecting the Application for Review.

In his reasons for confirming the case manager's decision, the Internal Review Officer stated:

We met to conduct [the Appellant's] Review Hearing on October 16, 2000. You acknowledged at that time that you had no evidence to counter the findings in [Appellant's neurologist's] report of March 28, 2000. [Text deleted's] decision is consistent with [Appellant's neurologist's] opinion that [the Appellant's] sense of taste is intact. It is also consistent with the opinion of our own medical consultant, [MPIC's doctor], in his report dated August 15, 2000. There is no reason, therefore, to interfere with [text deleted's] decision that [the Appellant] is not entitled to a Permanent Impairment benefit for his alleged loss of taste.

### **Appeal**

On November 6, 2000 the Appellant filed a Notice of Appeal and on November 10, 2003 he wrote to the Commission and stated:

First, I had lost the ability to taste food with my tongue since the automobile accident. It is important to note that the inability to taste the food is non-existent when it comes to taste spicy, hot food. As you may be aware, our ethnic [text deleted] food is well known for its spicy, hot taste.

The appeal hearing took place on March 4, 2004. The Appellant appeared, together with a translator, who assisted the Appellant in his submissions during the Commission proceedings. The Appellant testified that, as a result of the motor vehicle accident, he had lost his ability to taste hot, spicy food. He further testified that he is of [text deleted] descent, that ethnic [text deleted] food has a spicy, hot taste and that he has lost the pleasure of eating his native [text deleted] food. The Appellant further testified that the loss of the ability to taste hot, spicy food was a significant personal loss to him and denied him the opportunity of participating in an important cultural experience. The Appellant, therefore, submitted having regard to the importance of this loss he was entitled to an award for a permanent physical impairment due to the motor vehicle accident.

MPIC's legal counsel submitted that the decision of the Internal Review Officer was correct and, having regard to the medical reports of [Appellant's neurologist] and [MPIC's doctor], a physiological explanation cannot be provided for the Appellant's reported loss of taste and, therefore, the appeal should be dismissed.

### **Discussion**

In the Appellant's Application for Review of the Injury Claim Decision dated November 19, 1999, he stated that two or three months after the motor vehicle accident in 1994 he noticed a decreased sense of taste after undergoing several procedures for repair of his teeth and gums during that period of time. He further stated in his Application:

3. Since the accident, I have no way of knowing how much spice I have to put in my dish. For example, I often realize that I put too much spice in my food when I notice that I sweat a lot after eating that food.

.....

5. Due to the loss of the ability to taste food through my tongue after the accident, I have lost my appetite. Consequently, I can only eat small serving of food at a time on the account of my health, without the usual pleasure of eating food that I had before the accident.

The Commission finds that a neurological examination relative to the perception of primary sensations of salt, bitter, sweet and sour is limited. As stated by [Appellant's neurologist], who conducted such an examination on the Appellant, taste occurs not only on the anterior part of the tongue but also diffusely in the palate and to some extent on the posterior part of the tongue. [Appellant's neurologist] further states that since the sense of taste is not separated from the sense of smell, the sense of taste is a complex interplay of perceptions of the tongue with taste perceptions in the palate as well as olfactory sensations. Therefore, a neurological examination of the complex aspects of multiple tastes cannot be as specifically diagnostic as, for example, the x-ray examination of a patient with a fractured arm.

The Commission has observed the Appellant as he testified in the proceedings, reviewed his verbal and written comments to MPIC and finds that since the motor vehicle accident in 1994 he has consistently complained as to the loss of the taste for hot and spicy food and his desire to have MPIC recognize that this loss is of significance to the Appellant. The Commission finds

that the Appellant was very straightforward and direct in his testimony to the Commission and concludes he is a credible witness.

In view of the testimony of the Appellant, and the lack of methodology to evaluate the more complex and specific aspects of taste, the Commission determines that it will accept the evidence of the Appellant in preference to the medical opinions of [Appellant's neurologist] and [MPIC's doctor]. The Commission, therefore, determines that, on a balance of probabilities, as a result of the motor vehicle accident on July 24, 1994 the Appellant suffered a permanent physical impairment in respect to the loss of taste relating to hot, spicy food.

The Commission notes that, pursuant to Section 127 of the MPIC Act, an Appellant is entitled to a lump sum indemnity for a permanent impairment subject to the provisions of Division 4 and Manitoba Regulation 41/94. It should be noted that the motor vehicle accident occurred in 1994 and the regulations in existence at that time did not provide for an award in respect of the incomplete loss or total loss of taste. However, the regulations did provide a permanent impairment award relating to the loss of tongue at 5% and a permanent impairment award relating to the alteration of the tongue due to loss of the lateral edge and tip in the amount of between 1 to 3 %.

Since there is no specific provision in the regulation dealing with the loss of taste, the Commission is not bound by the regulation in determining the amount of the permanent impairment award to the Appellant. However, the Commission must consider that the regulation did provide for an impairment award to a maximum of 5% in respect of the loss of tongue, which is a far more significant impairment than the loss of a specific taste sensation. Nevertheless, the Commission does recognize that the loss of the taste sensation for hot, spicy

food to the Appellant, who is of [text deleted] descent, is a very significant personal and cultural loss. The Commission, therefore, directs MPIC to compensate the Appellant for the permanent impairment award in respect of the loss of taste of hot, spicy food in the amount of 2.5%. As a result, the Appellant's appeal is allowed and the Internal Review decision, dated October 17, 2000, is rescinded and the foregoing substituted for it.

Dated at Winnipeg this 13<sup>th</sup> day of April, 2004.

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**MEL MYERS, Q.C.**

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**DR. PATRICK DOYLE**

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**ANTOINE FRECHETTE**