

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-12-158**

PANEL: Ms Laura Diamond, Chairperson
Ms. Jacqueline Freedman
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: February 4, 2014

ISSUE(S): Whether the Appellant's permanent impairment benefits were correctly assessed and calculated.

RELEVANT SECTIONS: Section 127 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Division 13, Subdivision 2 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 injured in a motor vehicle accident on August 12, 2011. As a result, he was entitled to benefits under the Personal Injury Protection Plan ("PIPP") program of the MPIC Act.

On July 9, 2012, the Appellant's case manager wrote to him indicating that he was entitled to a permanent impairment benefit for scarring, in the amount of 15% or \$20,710.95.

The Appellant sought an Internal Review of this decision. On September 28, 2012, an Internal Review Officer for MPIC reviewed the Appellant's file. She reviewed the lacerations and soft tissue injuries which the Appellant had suffered in the motor vehicle accident, as well as a report from an occupational therapist and chiropractor regarding the impairment assessment. The Internal Review Officer agreed with the case manager's finding that the Appellant was entitled to a 15% permanent impairment benefit and upheld the case manager's decision. It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Preliminary Matters

At the appeal hearing, the parties confirmed that the Appellant is still dealing with his case manager in regard to his entitlement to possible Income Replacement Indemnity ("IRI") benefits. The appeal hearing commenced to deal only with the permanent impairment issue.

Evidence and Submission for the Appellant

The Appellant testified, by teleconference, at the appeal hearing. He described the scars he suffered in the motor vehicle accident, as well as pain in his lower back and legs. He indicated that the scars could be seen all over his legs and he could not even wear shorts in the summertime. In his view, a 15% permanent impairment benefit was nowhere near enough compensation for his scars, his pain and his difficulty working. He submitted that he should receive more entitlement for his scars, since they were clearly visible.

Evidence and Submission for MPIC

Counsel for MPIC reviewed a report dated September 22, 2011 prepared by [Appellant's Occupational Therapist], who measured the Appellant's scars. This was followed by a second

permanent impairment scar assessment report dated June 16, 2012 and also completed by [Appellant's Occupational Therapist].

Counsel explained that the occupational therapist measured the length and width of the Appellant's conspicuous scars, which would attract permanent impairment benefits.

Using these reports, an impairment assessment dated June 27, 2012 was prepared by MPIC to calculate the percentage of permanent impairment benefit available to the Appellant. The method of calculation is clearly set out in that document.

A medical report from the Appellant's chiropractor, [text deleted] dated August 22, 2012 was also reviewed. It referred to Whiplash Associated Disorder, strains, etc. but did not identify any additional permanent impairment.

Counsel also reviewed the Appellant's comments contained in his Notice of Appeal. She submitted that although the Appellant referred to his pain, pain was not compensable under the permanent impairment schedule of benefits. Although the Appellant referred to IRI benefits, the parties had agreed that this was not before the panel on the current appeal, as it was being investigated by the Appellant and his case manager.

Accordingly, counsel submitted that there were no further, identifiable objective permanent impairments arising from the motor vehicle accident. The Internal Review Officer had set out the impairments applicable section of the Act and percentage awards appropriate in this case.

INJURY/IMPAIRMENT	%	APPLICABLE SECTION	...
Right elbow scarring	1	Div. 13: Subdiv. 2, Table 13.3	...

Left elbow scarring	2	Div. 13: Subdiv. 2, Table 13.3	...
Right hand scarring	2	Div. 13: Subdiv. 2, Table 13.3	...
Right knee scarring	2	Div. 13: Subdiv. 2, Table 13.3	...
Left knee scarring	8	Div. 13: Subdiv. 2, Table 13.3	...
TOTAL	15		

Accordingly, the proper calculation of the Appellant's permanent impairment entitlement is 15% and the Appellant's appeal had to be dismissed.

Discussion

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Decision of September 28, 2012 was not correct in regard to the permanent impairment calculated. The MPIC Act provides:

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.

Regulation 41/94 sets out permanent impairments.

Table 13.3: Evaluation Of Disfigurement For Other Parts Of The Body

Body Region	Alteration in Form and Symmetry		Scarring		Maximum Impairment Rating
Scalp and skull	Minor or moderate change	2%	Conspicuous	0.5%/cm ²	5%
	Severe change	5%			
Neck	Minor or moderate change	3%	Conspicuous	1.0%/cm ²	8%
	Severe change	8%			
Arms, SHOULDERS and elbows	Minor or moderate change	1%	Conspicuous	0.5%/cm ²	4%
	Severe change	4%			
Forearms	Minor or moderate change	1%	Conspicuous	1.0%/cm ²	5%
	Severe change	5%			
Wrists and hands	Minor or moderate change	2%	Conspicuous	1.0%/cm ²	6%
	Severe change	6%			

Trunk	Minor or moderate change	2%	Conspicuous	0.5%/cm ²	6%
	Severe change	6%			
Lower limbs	Minor or moderate change	3%	Conspicuous	1.0%/cm ²	8%
	Severe change	8%			

The panel has reviewed the evidence on the Appellant's Indexed file, as well as the evidence and submission of the Appellant and the submission of MPIC at the appeal hearing.

We find that the Appellant has failed to provide any evidence to support his submission that he should be entitled to a further permanent impairment award.

Permanent impairment award calculations are determined by the Regulations under the MPIC Act. While we understand that the Appellant did suffer conspicuous scarring in the motor vehicle accident, we find that the assessment completed by [Appellant's Occupational Therapist] on June 16, 2012 assessed and measured the Appellant's scarring in a scientific and precise manner. MPIC then properly applied the provisions in the Regulations to arrive at a calculation of a 15% permanent impairment entitlement.

Accordingly, the decision of the Internal Review Officer dated September 28, 2012 is upheld by the Commission and the Appellant's appeal is dismissed.

Dated at Winnipeg this 5th day of March, 2014.

LAURA DIAMOND

JACQUELINE FREEDMAN

PAUL JOHNSTON